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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1892,

WITH INDEX.

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INDEX

TO

ABSTRACT OF PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

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VOLUME XXXI.

A

Pages.

Act III OF 1872. See *Bill to validate certain Christian Marriages.*

Act X OF 1870. See *Land Acquisition Act, 1870, Amendment Bill.*

Act XV OF 1877 See *Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill*

Act XV OF 1879. See *Rangoon Port Commissioners Act, 1879, Amendment Bill.*

Act XI OF 1882 See *Indian Tariff Act, 1882, Amendment Bill.*

Act XIV OF 1882 See *Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill.*

AMENDMENT OF LAWS See *Court of Wards Act, 1879 (B C), Amendment Bill, Indian Bankruptcy Bill, Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill; Indian Tariff Act, 1882, Amendment Bill, Land Acquisition Act, 1870, Amendment Bill, Merchant Shipping Bill, Partition Bill, Rangoon Port Commissioners Act, 1879, Amendment Bill*

ADDITIONAL MEMBERS—

Hon'ble Sir John Edgar 1

" G. R Elsmie 79

" J. L. Mackay 1

" Palli Chentaal Rao Pantulu 1

" Dr. Rash Behari Ghose 1

Pages

AMENDMENT PROPOSED AND NEGATIVED . . . . . 69—73
AMENDMENTS PROPOSED AND CARRIED . . . . 69, 80 82, 95, 104 & 105

B.

BARBOUR, HON'BLE SIR D. M.—
Indian Tariff Act, 1882, Amendment Bill . . . . . 10 & 11
Rangoon Port Commissioners Act, 1879, Amendment Bill . . 17

BENGAL MILITARY POLICE BILL—
Bill introduced 27
Referred to Select Committee . . . . . 27 & 28
Report presented 45
Report considered 73
Bill passed . . . . . *ib.*

BILL TO LEGALIZE EXECUTION IN BRITISH INDIA OF CAPITAL SENTENCES PASSED BY BRITISH COURTS IN FOREIGN TERRITORY—
Motion for leave to introduce . . . . . 97 & 98
Introduced 98
Motion to publish . . . . . *ib.*

BILL TO VALIDATE CERTAIN CHRISTIAN MARRIAGES—
Report presented 5
Report considered . . . . . 13—16
Bill passed 16

BLISS, HON'BLE H. W.—
Land Acquisition Act, 1870, Amendment Bill . . . . . 32—44
Madras Small Cause Court Bill 6
Rangoon Port Commissioners Act, 1879, Amendment Bill . . . . . 9 & 10, 16 & 17, 24, 30 & 31, 32

BRACKENBURY, HON'BLE LIEUTENANT-GENERAL H.—
Death of His Royal Highness the Duke of Clarence . . . 3

C

COUNCIL OF THE GOVERNOR GENERAL FOR MAKING LAWS AND REGULATIONS—
Adjournments 4, 11, 17, 21, 28, 44, 48, 78, 84, 96, 100, 119
Meetings of 1, 5, 13, 19, 23, 29, 45, 49, 79, 85, 97, 101

COURT OF WARDS ACT, 1879 (B. C.), AMENDMENT BILL—
Bill introduced 24
Referred to Select Committee . . . . . 24—27
Report presented 32
Report considered . . . . . 56—69
Amendment proposed and carried 69
Amendment proposed and negatived . . . . . 69—73
Bill passed 73

CROSTHWAITE, HON'BLE SIR C. H. T.—
Government Management of Private Estates Bill 79
Lower Burma Towns Bill . . . . . 82 to 84, 96, 97, 104

D

DEBATES IN COUNCIL— Pages

Bengal Military Police Bill . . . . . 27 & 28, 45, 73
Bill to legalize execution in British India of capital sentences passed by British Courts in foreign territory . . . . 97 & 98
Bill to validate certain Christian Marriages . . . . . 5, 13—16
Court of Wards Act, 1879 (B. C.), Amendment Bill . . 24—27, 32, 56—73
Death of His Royal Highness the Duke of Clarence . . . 1—4
Government Management of Private Estates Bill . 19—21, 79, 97, 101—103
Indian Bankruptcy Bill 5, 23
Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill . . . . . 45—48, 73 & 74, 80—82
Indian Tariff Act, 1882, Amendment Bill . . . . . 10 & 11
Inland Steam-ships Bill 119
Land Acquisition Act, 1870, Amendment Bill . . . . . 32—44
Lansdowne Bridge Bill . . . . . 98—100, 104 & 105
Lower Burma Towns Bill . . . . . 82—84, 96, 97, 104
Madras City Civil Court Bill—See *Madras Small Cause Court Bill.*
Madras Small Cause Court Bill 6—9, 16, 23 & 24, 29 & 30, 49—56, 79, 85—95
Merchant Shipping Bill 105 119
Partition Bill . . . . . 74—7
Porahat Estate Bill 96
Rangoon Port Commissioners Act, 1879, Amendment Bill . . . . . 9 & 10, 16 & 17, 24, 30—32

E

EDGAR, HON'BLE SIR JOHN—

Bengal Military Police Bill . . . . . 27 & 28, 45, 73
Court of Wards Act, 1879, Amendment Bill . . 24—27, 32, 56—59, 73
Took his seat as an Additional Member of Council . . . 1

ELSMIE, HON'BLE G. R.—

Government Management of Private Estates Bill . . 79
Took his seat as an Additional Member of Council . . . 79

EVANS, HON'BLE G. H. P.—

Bengal Military Police Bill 27
Court of Wards Act, 1879 (B. C.), Amendment Bill . . 24, 59—61, 69
Madras Small Cause Court Bill 6

G

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL—

Motion for leave to introduce . . . . . 19—21
Introduced 21
Motion to publish . . . . . *ib.*

Pages.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL—*continued.*

Referred to Select Committee 79
Report presented 97
Report considered . . . . . 101—103
Bill passed 103

H

HIS EXCELLENCY THE PRESIDENT—

Death of His Royal Highness the Duke of Clarence . . . 1 & 2, 4

HIS HONOUR THE LIEUTENANT-GOVERNOR OF BENGAL—

Court of Wards Act, 1879 (B. C.), Amendment Bill . . 66—69, 72 & 73
Death of His Royal Highness the Duke of Clarence . . . 3
Madras Small Cause Court Bill 56

HUTCHINS, HON'BLE SIR P. P.—

Bengal Military Police Bill 27
Court of Wards Act, 1879, Amendment Bill . . . 24, 61—63, 72
Government Management of Private Estates Bill . 19—21, 79, 97, 101—103
Indian Bankruptcy Bill 23
Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill 80, 81
Lower Burma Towns Bill 96
Madras Small Cause Court Bill 6—8, 16, 23 & 24, 29 & 30, 49—55, 79, 85—92, 95
Partition Bill . . . . . 77 & 78

I

INDIAN BANKRUPTCY BILL—

Select Committee added 5, 23

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PROCEDURE AMENDMENT BILL—

Motion for leave to introduce . . . . . 45—48
Introduced 48
Motion to publish . . . . . *ib.*
Motion to consider Bill postponed . . . . . 73 & 74
Bill considered 80
Amendments proposed and carried . . . . . 80—82
Bill passed 82

INDIAN TARIFF ACT, 1882, AMENDMENT BILL—

Motion for leave to introduce 10
Introduced . . . . . *ib.*
Rules of Business suspended 11
Bill taken into consideration . . . . . *ib.*
Bill passed . . . . . *ib.*

INLAND STEAM-SHIPS BILL—

Motions for leave to introduce and publish withdrawn . . . 119

L

Pages.

LAND ACQUISITION ACT, 1870, AMENDMENT BILL—

Motion for leave to introduce . . . . . 32—44
Introduced 44
Motion to publish . . . . . *ib.*

LANSDOWNE BRIDGE BILL—

Motion for leave to introduce . . . . . 98 & 99
Introduced 100
Motion to publish . . . . . *ib.*
Bill considered 104
Amendment proposed and carried . . . . . 104 & 105
Bill passed 105

LOWER BURMA TOWNS BILL—

Motion for leave to introduce . . . . . 82—84
Introduced 84
Motion to publish . . . . . *ib.*
Referred to Select Committee 96
Report presented 97
Report considered 104
Bill passed . . . . . *ib*

M

MACKAY, HON'BLE J. L.—

Rangoon Port Commissioners Act, 1879, Amendment Bill . . . 17, 31
Took his seat as an Additional Member of Council 1

MADRAS CITY CIVIL COURT BILL. See *Madras Small Cause Court Bill.*

MADRAS SMALL CAUSE COURT BILL—

Select Committee added . . . . . 6—9
Preliminary Report presented 16
Presentation of Further Report postponed . . . . . 23 & 24, 29 & 30
Further Report presented . . . . . 49—56
Final Report presented 79
Reports considered . . . . . 85—95
Amendments proposed and carried 95
Bill passed . . . . . *ib.*

MERCHANT SHIPPING BILL—

Motion for leave to introduce . . . . . 105—119
Introduced 119
Motion to publish . . . . . *ib.*

Pages.

MILLER, HON'BLE SIR A E —
Bengal Military Police Bill 27
Bill to legalize execution in British India of capital sentences passed by British Courts in foreign territory . . . . . 97 & 98
Bill to validate certain Christian Marriages . . . . . 5 13—15 16
Court of Wards Act, 1879 Amendment Bill . . . . . 24, 63—66
Government Management of Private Estates Bill 79
Indian Bankruptcy Bill 5, 23
Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill . . . . . 45—48, 73 & 74, 80, 81, 82
Inland Steam-ships Bill 119
Lansdowne Bridge Bill . . . . . 98 & 99, 104 & 105
Lower Burma Towns Bill 96
Madras Small Cause Court Bill . . . . . 30 92—95
Merchant Shipping Bill . . . . . 105—119
Porahat Estate Bill 96
Rangoon Port Commissioners Act, 1879, Amendment Bill . . 17

N

NUGENT, HON'BLE J —
Indian Bankruptcy Bill 5

P

PALLI CHENTSAL RAO PANTULU, HON'BLE—
Bill to validate certain Christian Marriages . . . . . 15 & 16
Court of Wards Act, 1879 (B C.), Amendment Bill . . . . 69—73
Madras Small Cause Court Bill 6, 55
Took his seat as an Additional Member of Council 1

PARTITION BILL—
Motion for leave to introduce . . . . . 74—78
Introduced 78
Motion to publish . . . . . *ib.*

PORAHAT ESTATE BILL—
Motion for leave to introduce 96
Introduced . . . . . *ib*
Motion to publish . . . . . *ib*

PUBLICATION OF—
Bill to legalize execution in British India of capital sentences passed by British Courts in foreign territory 98
Government Management of Private Estates Bill 21
Indian Limitation Act, 1877, and Code of Civil Procedure Amendment Bill 48
Land Acquisition Act, 1870, Amendment Bill 44

Pages.

PUBLICATION OF—*continued.*

Lansdowne Bridge Bill 100
Lower Burma Towns Bill 84
Merchant Shipping Bill 116
Partition Bill 78
Porahat Estate Bill 96
Rangoon Port Commissioners Act, 1879, Amendment Bill . . 10

R

RANGOON PORT COMMISSIONERS ACT, 1879, AMENDMENT BILL—

Motion for leave to introduce 9
Introduced 16
Motion to publish 10
Referred to Select Committee . . . . . 16 & 17
Report presented 24
Report considered . . . . . 30—32
Bill passed 32

RASH BEHARI GHOSE, HON'BLE DR.—

Bengal Military Police Bill 27
Court of Wards Act, 1879 (B. C.), Amendment Bill . . . 24
Indian Bankruptcy Bill 5
Madras Small Cause Court Bill 6
Partition Bill . . . . . 74—77, 78
Took his seat as an Additional Member of Council . . . 1

SELECT COMMITTEE—	Appointed	Report presented	Report considered.
	Pages.	*Pages*	*Pages*
Bengal Military Police Bill	27 & 28	45	73
Bill to validate certain Christian Marriages . .	...	5	13—16
Court of Wards Act, 1879 (B. C.), Amendment Bill	24—27	32	56—69
Government Management of Private Estates Bill .	79	97	101—103
Lower Burma Towns Bill	96	97	104
Madras Small Cause Court Bill	...	16 & ~~44~~ & ~~54~~ ~~79~~.	85—95
Rangoon Port Commissioners Act, 1879, Amendment Bill	16 & 17	24	30—32

49-56, 79

U

Pages.

UDAI PARTAB SINGH OF BHINGA, HON'BLE RAJA—

Death of His Royal Highness the Duke of Clarence 4
Madras Small Cause Court Bill 8, 9

W

WOODBURN, HON'BLE J.—

Court of Wards Act, 1879 (B. C.), Amendment Bill 24
Indian Bankruptcy Bill 5

Government of India Central Printing Office.—No. 161 L. D.—8-1-93.—316.

BENGAL SECRETARIAT LIBRARY

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 15th January, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General H Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble Nawab Ahsan-Ulla Bahadur, C.I.E.
The Hon'ble H. W. Bliss, C I.E.
The Hon'ble J. Nugent.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble Raja Udai Partab Singh of Bhinga.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

NEW MEMBERS.

The Hon'ble MR. MACKAY, the Hon'ble DR. RASH BEHARI GHOSE, the Hon'ble SIR JOHN EDGAR and the Hon'ble P. CHENTSAL RAO took their seats as Additional Members.

DEATH OF HIS ROYAL HIGHNESS THE DUKE OF CLARENCE.

His Excellency THE PRESIDENT addressed the Council as follows:—

"I feel sure that my hon'ble colleagues will desire to take some notice of the great calamity, the news of which reached us yesterday—a calamity the shadow of which has thrown a deep gloom over the whole of the British Empire.

"The death of a Prince who, in the natural order of events, would have succeeded to the Throne of India is an event which a Council, entrusted, as this Council is, with the duty of legislating for India, and containing members connected with almost every part of the country, is not likely to pass over without some outward manifestation of its sympathy and regret.

"Two years ago many of us had the pleasure of becoming acquainted with the late Duke of Clarence when he was our guest here. Our thoughts travel back to the time when we looked upon him as he stood amongst us then, in the spring-tide of his life, full of health and hope, the destined inheritor, not only of a great Empire, but of that wealth of affection and respect which Her Majesty and Her children have known how to accumulate for themselves.

"Of late our interest in His Royal Highness had been redoubled by the announcement of his engagement to a young and charming Princess, herself widely popular amongst Her Majesty's subjects—an engagement which appealed vividly to our imaginations, which seemed to promise, for those who were about to become husband and wife, a rich abundance of happiness, and, for the nation, an increase to the stability of the Royal House and to the security of the Throne.

"No more brilliant or attractive prospect ever lay before a young Englishman, no career could have seemed fuller of useful and far-reaching opportunities, than that which was open to the young Prince whom India as well as England now mourns. A few days—I might almost say a few hours—have sufficed to shatter all our hopes, to ruin all the bright expectations in which we had indulged.

"At this moment there is scarcely room in our thoughts for the loss which the nation has sustained, or for conjectures as to the remoter results of this misfortune. We can think only of the blow which has fallen upon Her Majesty the Queen-Empress, of the grief of those who are sorrowing with her over the Duke of Clarence's death, and to whom we wish to convey some token of our deep regret, some mark of our regard for his memory.

"I suggest for the consideration of the Council that it would be a proper and usual mark of respect that we should adjourn without transacting the business which is upon the paper. I leave it entirely to my hon'ble colleagues to say whether they desire that any specific assurance should be offered on their behalf to Her Majesty the Queen-Empress and to the rest of the Royal Family."

His Honour THE LIEUTENANT-GOVERNOR said:—

"I believe, my Lord, that I am expressing the feelings of all my hon'ble colleagues assembled here when I say that it would be the wish of the Council that some expression should be conveyed by Your Excellency, in the manner in which you have suggested, of our profound sympathy with Her Majesty the Queen-Empress and Their Royal Highnesses the Prince and Princess of Wales in the great calamity which has overtaken not only them but the nation.

"I will not attempt to suggest that anything should be added to what was contained in the eloquent words which Your Excellency has just uttered, and I believe that they express as fitly and completely as possible the feelings which animate us all.

"I may venture, however, as the Lieutenant-Governor of this vast Province, to say that a calamity of this kind must be very deeply and widely felt by a population with whom personal loyalty is so strong a motive as it is with the people of India, and who were so much drawn and attracted by what they saw and heard of His Royal Highness's demeanour and character on the occasion of his visit to India.

"I am quite sure that every intelligent and educated member of this province will desire to associate himself with the Government of India and with Your Excellency's Council in the expression of their deep sympathy in the great disaster which has overtaken the people of India no less than ourselves and the Royal Family."

The Hon'ble LIEUTENANT-GENERAL BRACKENBURY said:—

"I regret that His Excellency the Commander-in-Chief is not present here to-day, that he might give utterance to the feelings of Her Majesty's army on this sad occasion. In his absence I would ask permission to say on behalf of all classes of Her Majesty's soldiers, European and Native, how great is our sorrow at the loss of this young Prince, our comrade in arms; how deep is the sympathy that we feel in their bereavement with Their Royal Highnesses the Prince and Princess of Wales, and in this, the crowning sorrow of Her life, with Her Most Gracious Majesty the Queen-Empress, whom we, her loyal soldiers, so truly love, honour and revere."

The Hon'ble RAJA UDAI PARTAB SINGH OF BHINGA said :—

"On behalf of the Native members of Your Excellency's Legislative Council I beg to express the deep sorrow we feel at the calamity which has befallen us all. We desire that an expression of our sorrow and sympathy may be conveyed to Her Most Gracious Majesty and to Their Royal Highnesses the Prince and Princess of Wales."

His Excellency THE PRESIDENT said :—

"In accordance with the wish which has been expressed, I will convey to Her Majesty an assurance of the deep sympathy felt by hon'ble members in the loss which She has sustained.

"It may interest hon'ble members to know that I have received the following reply from Her Majesty to a telegram which I addressed to Her yesterday. I had ventured to offer Her Majesty my respectful condolence, and I mentioned to Her the consternation with which the news of His Royal Highness' illness and its fatal termination had been received here.

"Her Majesty's gracious reply runs as follows :—

'Many thanks. I am sure of the sympathy of my loyal Indian people.'"

The Council adjourned to Saturday, the 16th January, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 15th January, 1892.

Government of India Central Printing Office.—No. 374 L. D.—19-1-92.—318.—A. E. deS.

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The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

INDIAN BANKRUPTCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Mr. Nugent, the Hon'ble Mr. Woodburn and the Hon'ble Dr. Rash Behari Ghose be added to the Select Committee on the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India.

The Motion was put and agreed to.

BILL TO VALIDATE CERTAIN CHRISTIAN MARRIAGES.

The Hon'ble SIR ALEXANDER MILLER also presented the Report of the Select Committee on the Bill to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872. He said that he understood the practice to be that any observations which he had to make on the subject should be reserved until the Report was taken into consideration.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Hon'ble Mr. Bliss, the Hon'ble Mr. Evans, the Hon'ble Dr. Rash Behari Ghose and the Hon'ble P. Chentsal Rao be added to the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras, and that the Committee be instructed to report within a fortnight. He said :—

"The motion for a Committee to consider a Bill is usually a mere matter of form, but on the present occasion I ask Your Excellency, before putting the formal question, to allow me to make a short statement, as I shall invite the Select Committee to consider some alternative proposals and I am anxious to let the people of Madras know at once how far I think it possible to meet the wishes which they have expressed.

"Hon'ble Members are probably aware that the original Bill has not been received at Madras with that universal approval which I anticipated. I think it would not be difficult to answer most of the objections raised to it, but I desire to avoid unnecessary controversy, and I would rather place emphasis on the fact that every one seems to agree in the fundamental proposition on which the Bill rests, *viz.*, that it is desirable to relieve the High Court of original civil suits of small value arising within the city of Madras. The third and principal Resolution adopted at a public meeting which was held in Madras on the 4th of September last was to the effect 'that there do exist a hardship and a practical denial of justice to a not insignificant portion of the inhabitants of this city under the present system of judicial administration in the presidency-town' which call for an early remedy. It was to meet this hardship and this practical denial of justice that I proposed to establish a regular side of the Small Cause Court, so that on the most essential point, and I think I may say on the only essential point, I may claim to have rightly gauged the popular sentiment.

"But the same Resolution went on to declare 'that the proper remedy should be sought in the creation of a new tribunal, presided over by Judges selected from the legal profession, and having regular jurisdiction to try suits up to R2,500.' I will not stop to enquire how far this opposition to making the new Court a part and parcel of the Small Cause Court has sprung from the fact, which I mentioned in my former speech, that the Judge of the new Court would have to be an Advocate and not a member of any other branch of the legal profession; for I myself would greatly prefer that Vakils as well as Advocates should be eligible for the new appointment. That, however, is not the ostensible

ground of the opposition to a regular side of the Small Cause Court. It is said that the regular suits will interfere with the summary jurisdiction, which undoubtedly is the primary work of a Court of Small Causes. I cannot for a moment admit the soundness of this objection. The opinions of most authorities best qualified to form one are that there would be no such interference, and it appears to me that the objection is really based on a misapprehension. I will not, however, pursue this subject further, because I am personally quite willing to accept the alternative of a separate Court upon one condition—a condition which is not likely to be objected to—and that is that the Judge or Judges shall be *ex officio* Judges of the Small Cause Court also, and shall devote their spare time to helping to dispose of claims instituted in that Court. I have already explained how impossible it is to foresee how much business will be attracted to the new Court: it may fall very far short of what even a single Judge can cope with; or it may prove too much for one, but not enough for two.

"I am the more ready to accede to this alternative, because it would greatly simplify the drafting of the Bill and obviate all possibility of question as to how far, if at all, the Court is to be governed by the procedure prescribed by Act XV of 1882. The new Court would obviously be, as I intended the regular side of the Small Cause Court to be, absolutely distinct and separate from the Court of summary jurisdiction. As to procedure, it would be governed exclusively by the Code of Civil Procedure, and in common with all other Courts (not specially excepted like the Small Cause Court) it would be subject to the Court-fees Act and other enactments of general application.

"So much for the main point. Now, as to the pecuniary limit of jurisdiction. It was originally intended that this should be Rs. 2,500, but in view of the proposal (contrary to my own expressed opinion, in which I am glad to find most of the Madras authorities agree) that the High Court should retain a concurrent jurisdiction, I set down Rs. 5,000 in the Bill as introduced. This was always intended to be a tentative figure and open to revision, but I take it that if a distinct Court is created the concurrent jurisdiction of the High Court will cease under the operation of section 15 of the Code, and it is therefore unnecessary to consider the matter further. I revert as a matter of course to the original proposal.

"In the Bill as introduced I proposed to empower the Local Government, with the previous sanction of Your Excellency in Council, to extend the new Court's jurisdiction to a higher limit. I was careful to explain that such sanction would only be accorded if the High Court agreed, and I would readily consent to make

the concurrence of the Hon'ble the Judges a statutory condition. It will be for the Select Committee to decide whether there shall be a clause permitting the extension of the jurisdiction up to (say) Rs. 5,000 when the High Court, the Local Government and the Government of India all agree, or whether such extension by notification is so radically bad or otherwise objectionable that it is better not to permit it at all. I have already stated the arguments in favour of such a provision; it is not one for which I should be inclined to press with any persistence.

"It seems hardly necessary for me to say that none of my proposals will, in any way, trench on the independence of the High Court. Their Lordships the Judges will be relieved of the necessity of dealing with the petty cases which fall within the cognizance of the new Court, but they will have full power to call up such suits to their own file, and I have already expressed a hope that this power may be freely exercised, at all events at the commencement.

"I ask that it be an instruction to the Committee to submit its report within a fortnight, but it must not be supposed that I wish the Bill to be rushed through the Council. I have no intention of bringing it on for final consideration before about the middle of March. My object is simply that the people interested may have the longest possible notice of the Committee's decision as to the alternative proposals which will be laid before it."

The Hon'ble RAJA UDAI PARTAB SINGH OF BHINGA said:—

"After what has already been said about the Bill before the Council, a lengthy reference from me would be superfluous. I would, however, remark that the Allahabad High Court having no original jurisdiction, the somewhat alarming note that is sounded in the reference to the introduction of the 'thin end of the wedge' has little or no application to the people of the United Provinces. As regards Madras, the papers before the Council clearly show that the residents of the town itself want some such relief as is provided in this Bill. But at the same time I venture to submit that the objections to the proposal of raising the pecuniary limit, vesting in the Local Government the power to raise it still higher without having recourse to legislation or reference to the High Court, and the increase of court-fees under the proposed changes, appear to be weighty and deserving of careful consideration."

The Hon'ble SIR PHILIP HUTCHINS said that as the Raja of Bhinga had given some attention to the subject and appeared to take an interest in it, he would propose that his name should be added to the Select Committee.

The Motion that the Hon'ble Mr. Bliss, the Hon'ble Mr. Evans, the Hon'ble Raja Udai Partab Singh of Bhinga, the Hon'ble Dr. Rash Behari Ghose and the Hon'ble P. Chentsal Rao be added to the Select Committee on the Bill, and that the Committee be instructed to submit its report within a fortnight, was then put and agreed to.

RANGOON PORT COMMISSIONERS' ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. BLISS moved for leave to introduce a Bill to amend the Rangoon Port Commissioners' Act, 1879. He said:—

"The reasons which have rendered the introduction of this Bill advisable are fully set out in the Statement of Objects and Reasons attached to the Bill. Briefly they are, that inconvenience has in practice been found to arise from the provision in section 71 of the existing Act that no Commissioner shall directly or indirectly lend money to the Commissioners or be interested in any contract made by, or on behalf of, the Commissioners. Rangoon is a comparatively small place, and if all the firms to which different members of the Port Commission belong are to be prohibited from accepting contracts from, and from carrying out works on account of, the Port Commission, it will be difficult to get certain works carried out economically and efficiently, or perhaps at all. On the other hand, if all gentlemen whose firms are capable and desirous of executing works for the Port Commission are to be compelled to decline to serve on the Commission, in order to enable their firms to do business with it, the interests of the port will suffer by the absence from the Commission of the very persons whose services on it will be most valuable. It is, therefore, proposed to amend the law by granting permission to members of the Port Commission to tender for and carry out Port Commission works, with the previous sanction in writing of the Local Government, and by the simultaneous addition of a proviso that no Port Commissioner shall vote or take any part in any proceedings relating to any such tender or contract. The law will thus be assimilated to those which regulate in this respect the administration of the port of Calcutta and of the municipalities in Lower Burma."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also introduced the Bill.

The Hon'ble MR. BLISS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

INDIAN TARIFF ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved for leave to introduce a Bill to amend the Indian Tariff Act, 1882. He said:—

"The amendment which I propose is very simple. Under section 5 of the Act of 1882 power is taken to impose customs-duties in accordance with the existing tariff on goods passing by land out of or into foreign European settlements situated on the line of coast within the limits of the Presidency of Fort St. George. This provision is necessary in order to prevent advantage being taken of the existence of these settlements for the purpose of evading payment of the customs-duties of British India. But no similar provision exists with regard to foreign settlements situated within the limits of the Presidency of Bombay, and the cause of this difference is that, at the time the Act of 1882 was passed, we had a treaty with Portugal which established a sort of customs-union between British India and Portuguese India. This treaty was considered to be in more than one respect disadvantageous to the interests of British India, and, as the efforts made to effect suitable modifications of it have unfortunately failed, the treaty has come to an end, and it becomes necessary to make such alteration of the law as shall prevent advantage being taken of the Portuguese settlements on the West Coast for the purpose of evading payment of our customs-duties. With this object provision is made in the Bill, which I propose to introduce, for the levy of customs-duties at the prescribed rates on goods passing by land into or out of foreign European settlements bordering on any part of the territories administered by the Governor of Bombay in Council, thus applying to Bombay the provisions which already exist in the case of Madras."

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR also introduced the Bill. He said that, as it was necessary, in order to prevent evasions of the payment of customs-duties, that the proposed amendment of the law should come into force imme-

diately, he would ask His Excellency to suspend the Rules for the Conduct of Business, so that the Bill might be passed at the present meeting of the Council. He might also mention that, owing to the adjournment of the Council yesterday, it was necessary to provide in the Bill that the alteration in the law should have effect from the 15th January.

THE PRESIDENT declared the Rules to be suspended.

The Hon'ble SIR DAVID BARBOUR moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR DAVID BARBOUR then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 29th January, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA ;
The 22nd January, 1892.

Government of India Central Printing Office.—No. 387 L. D.—22-1-92.—350.—A. E. 628

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

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The Council met at Government House on Friday, the 29th January, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, Kt., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Colonel R. C. B. Pemberton, R.E.

The Hon'ble Nawab Ahsan-Ulla Bahadur, C.I.E.

The Hon'ble H. W. Bliss, C.I.E.

The Hon'ble J. Nugent.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble Raja Udai Partab Singh of Bhinga.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rash Behari Ghose.

The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

BILL TO VALIDATE CERTAIN CHRISTIAN MARRIAGES.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872, be taken into consideration. He said:—

"It will be remembered that this Bill to validate certain marriages which appear to have been solemnised by mistake was introduced into the Council some months ago. Part VI of the Indian Christian Marriage Act is only intended for the solemnization of marriages between persons both of whom are Native Christians, but by a mistake apparently arising from ignorance of this provision some of the persons licensed to solemnise such marriages have solemnised them between persons only one of whom was a Native Christian, and

the result is that as the law at present stands these marriages are invalid; but I rather think it has been generally felt that this has arisen out of a mere misconception of the law and that there was no intention on the part of any of the parties concerned to do otherwise than contract valid marriages. It is however desirable, while taking all the care we possibly can to prevent any such irregularity in the future, that these persons—or rather their children—should not suffer by the error, and we therefore propose to validate these marriages in the past so far as may be practicable.

"Originally, in order to give time for this Act to become known, we proposed to validate not only marriages already solemnised up to the passing of the Act, but those which might be solemnised for three months after the passing of it. As, however, the Bill was brought in so long ago, and as every one must by this time know everything about it, this course has been considered unnecessary, and we propose to validate only such marriages as have already been solemnised under Part VI of the Act. Further, we have provided that, in case any of these invalid marriages have already been judicially pronounced void, such marriages should not be validated, as vested rights may have been acquired under the decisions thus given; this validation will therefore only extend to marriages which, though invalid under the law, have up to the present time been regarded by the contracting parties as valid.

"I may here mention that, amongst the opinions offered with regard to the Bill, we find one from certain clergymen in the North-Western Provinces who consider that a marriage between a person who is a Native Christian and a person who is not a Native Christian is invalid in itself,—on what principle I do not know; but these gentlemen have thought fit to declare that they will disregard the validation which the Bill contemplates, and that if any of the persons whose marriage has been so validated should wish to set aside the marriage, and to contract a marriage which would be valid before the Church, they would consider it their duty to solemnize such second marriage. I can only say that, so far as the business of this Council is concerned, it is no part of our duty to offer advice to these gentlemen, but I think they should know that any such action on their part would probably bring them within the provisions of the criminal law and render them liable to prosecution.

"My hon'ble friend Mr. Chentsal Rao is, I understand, about to give notice of motion for leave to re-commit this Bill to the Select Committee. I will leave him to state his own case, but, so far as I understand his intention, I think that

what he desires to do would probably be better done by a separate Act than by any amendment of the present measure."

The Hon'ble P. CHENTSAL RAO said:—

"I think it is desirable that the Bill should be referred back to the Select Committee in view to their considering the expediency of modifying Part VI of the Christian Marriage Act so as to cover mixed marriages.

"I observe that His Honour the Lieutenant-Governor of the Punjab, the Chief Commissioner of Burma and the Commissioner of Dacca, and some more officers and gentlemen whom we have consulted, have drawn our attention to the point I have raised, *i.e.*, the desirability of extending Part VI so as to cover mixed marriages; and I also note that the Revd. Mr. Cushing of Burma states that there are large Christian and non-Christian communities in that part of the country among whom inter-marriages are customary. He adds that these communities live far away from places where any Ministers or Marriage Registrars competent to solemnize mixed marriages are to be found, that it would be impossible for the parties to go to the distant city or town where alone the services of a Marriage Registrar or Minister could be obtained, and that they would join illegal union if the law puts legal union beyond their reach. Under such circumstances, it seems to me that we must make some provision to enable men so situated to get their marriages solemnized at the spot and without inconvenience. Sir Alexander Mackenzie thinks that licenses may be granted to selected persons to celebrate mixed marriages, and this suggestion commends itself to me as simple, practical and convenient. As the law now stands, a Marriage Registrar can only be appointed for a whole district and not for a portion with limited powers. Probably it was on this account, and in consideration of the somewhat tedious character of the procedure prescribed for Marriage Registrars, that Part VI has been enacted and power taken to grant licenses to Native Christians to solemnize marriages with simpler procedure suited to the requirements of men with simple habits and poor education. Apart from the public convenience, I do not see any special reason why the power of solemnizing mixed marriages should be withheld from the Native Christians any more than from Marriage Registrars, at any rate in cases where both the parties consent and no objections are raised by the guardians.

"My Lord, these are my views, but I am not myself much interested in this question, as hardly any mixed marriages take place in my part of the country, and I am not disposed to press it upon the attention of the Council, if they do do not consider it to be of sufficient importance to require consideration. I

have ventured to make these remarks because, from the Select Committee's Report, this point does not appear to have been considered, and because for my part I consider that the amendment of Part VI on the lines suggested will much help the cause of morality and promote social homogeneity in villages of mixed communities, which it should be our aim to encourage."

The Motion that the Report of the Select Committee be taken into consideration was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented a preliminary Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras, and moved that the time for the presentation of the final Report of the Select Committee on the Bill be extended to the 4th March, 1892. He said:—

"The Council will remember that I stated at our last meeting that I intended to lay some alternative proposals before the Select Committee. The Committee has recommended that those proposals be formulated in a Bill, and that the Bill be sent down to Madras for consideration before it is discussed by them in detail. This is just what I wished to move myself a fortnight ago, but I was informed by the Secretary that it would not be in accordance with the ordinary course of business to put forward a new Bill without the intervention of a Select Committee. A Bill has now been prepared and accompanies our preliminary Report. If the Council accepts my present motion, the Bill will be sent to Madras, and we shall be able to learn how far it meets with local approval before the Committee proceed to discuss its provisions and settle their final Report."

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS' ACT, 1879, AMENDMENT BILL.

The Hon'ble MR. BLISS moved that the Bill to amend the Rangoon Port Commissioners Act, 1879, be referred to a Select Committee consisting of the

[29TH JANUARY, 1892.] [*Mr. Bliss*]

Hon'ble Sir Alexander Miller, the Hon'ble Sir David Barbour, the Hon'ble Mr Mackay and the Mover, with instructions to report after three weeks.

The Motion was put and agreed to.

The Council adjourned to Friday, the 12th February, 1892.

S HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA,
The 5th February, 1892

Government of India Central Printing Office No 416 L D—5-2-92—350 A F de9

DEPARTMENT
FILE
NUMBER
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PROCEEDINGS

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 12th February, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G. G.M.S.I., G.M.I.E., *presiding*.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble Nawab Ahsan-Ulla Bahadur, C.I.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble J. Nugent.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS moved for leave to introduce a Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management. He said:—

"In this country Government is landlord paramount and to a certain extent patriarchal. It intervenes for the protection of private estates in a variety of contingencies, and in order to protect them assumes their management. This is perhaps best understood in connection with the action of the Court of Wards, the popularity of which is both well deserved and universal; but incumbered estates have often been saved from the hammer by the intervention of Government, either after effecting an arrangement with the creditors, or under the provisions of the Code of Civil Procedure, when a decree-holder presses for a sale. The laws for the recovery of revenue also favour the attachment and management of estates which fall into arrears rather than the sale either of the whole or a substantial part of them.

But all such management costs money and occupies to a greater or less extent valuable time of public officers who are the paid servants of the tax payers In some cases the immediate administration of the estate is entrusted to a special paid manager under the Collector but there must still be a good deal of supervision by the Collector himself and probably by yet higher officers and such supervision entails also considerable contingent expenditure In many cases too even the direct management is undertaken by an officer in the position of a tahsildar

' The fundamental principle of the Bill which I now seek to introduce is that all such management is for the benefit of the private estate and should be paid for out of its income and not out of the pocket of the general tax payer The mere enunciation of the principle shows its fairness the unfairness is to charge the public for services rendered to individuals There is indeed another legal principle that no trustee should be allowed to make money for himself out of his trust but even under the most jealous system of equity every trustee is permitted to charge for the services of his establishment and that is all that I propose to do

' There is only one case in regard to which I can foresee the possibility of objection and that is the case of estates attached for arrears of revenue It might be said that in this instance the attachment is for the benefit of Government, or in other words for the benefit of the general tax payer, and that Government or the tax payer should bear the expense But as I have already indicated if the realization of the revenue is considered alone it will be best secured by a summary sale of the estate The grounds for preferring a temporary sequestration are a lenient consideration for the defaulter and his family and a reluctance to proceed to extremities where milder measures are likely to prove efficacious Even in this instance therefore the management is really undertaken for the benefit of the defaulting proprietor or others interested in the preservation of the estate

Assuming then that all the cost of management so far as it can be estimated ought to be thrown on the estate I will now explain how my Bill secures this object By section 3 I authorise a Local Government to impose a rate on all private estates under the management of its officers The rate is in no cases to exceed 4 per cent of the income which, having regard to the commission payable to private agents or to receivers appointed by the Courts is certainly not an excessive maximum But it is further provided that the actual rate shall be calculated from time to time so as just to cover as nearly as may be, (1) the real cost of public establishments employed on, or in connection with,

the management, and (2) the incidental expenditure on contingencies Power is reserved to reduce or remit the rate in special cases, as where special managers are employed and only control and supervision supplied by public officers. Section 4 relates to charges for audit and legal advice, and allows Local Governments the option of prescribing special fees for such services or including them in the general rate. Where they are rendered by what are known as whole-time officers the latter alternative will probably be chosen, but there has been a practical difficulty in the way of laying this down as a universal rule.

"Section 6 validates charges of the nature of those now to be authorized which have been levied in the past. For in several provinces a general rate has already been levied on estates under the Court of Wards and credited to the public exchequer to meet the estimated cost of supervision and management by Government officers. I do not for a moment say that such a charge is even now illegal under the laws applicable to the particular provinces, but it is desirable to place its propriety beyond question.

"The other provisions of the Bill are merely incidental, except perhaps section 8. This constitutes the Local Government the sole judge of the value of the work entailed on its establishments, and will prevent the amount of the rate being questioned in a Civil Court, so long of course as it is within the very moderate maximum of 4 per cent."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 4th March, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 12th February, 1892.

Government of India Central Printing Office.—No. 444 L. D.—16-2-92.—316.—A. E. deS.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 4th March, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble J. Nugent.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

INDIAN BANKRUPTCY BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Sir Philip Hutchins be added to the Select Committee on the Bill to amend and consolidate the law of Bankruptcy and Insolvency in British India. He explained that looking at the character of the Bill it was necessary that the Hon'ble Member in charge of the Home Department should be one of the Select Committee.

The Motion was put and agreed to.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the presentation of the final Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be postponed to the next meeting of the

Council. He explained that the papers relating to the Bill had not yet arrived from Madras, but he hoped that they would arrive in time to enable the Committee to take them into consideration and frame its report before the next meeting of the Council.

The Motion was put and agreed to.

RANGOON PORT COMMISSIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble MR BLISS presented the Report of the Select Committee on the Bill to amend the Rangoon Port Commissioners Act, 1879.

COURT OF WARDS ACT, 1879 (B. C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR introduced the Bill to amend the Court of Wards Act, 1879 (B.C.), and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Evans, the Hon'ble Mr. Woodburn, the Hon'ble Dr Rash Behari Ghose and the Mover, with instructions to report in a week. He said:—

"The most important provisions of the Bill which I am now about to lay before this Council are meant to amend the Bengal Court of Wards Act of 1879 so as to enable the Court of Wards to take over the management of the property of persons not otherwise disqualified upon their own application and with the sanction of the Lieutenant-Governor in each case. Similar provisions were included in a Bill passed by the Council of the Lieutenant-Governor of Bengal in 1877, from which however the sanction of the Governor General was withheld owing to a technical defect. Since that time the desirability of taking some measures to preserve ancient families from ruin and to prevent estates of historical and political importance from being broken up has frequently been brought home to the Government, and in one instance a special Act was passed with the consent of the creditors of a great landholder with a view to rescuing his estate from imminent ruin. In March, 1891, a Bill similar to that part of the present Bill which affects proprietors disqualified on their own application was introduced into the Council of the Lieutenant-Governor of Bengal and reported upon by a Select Committee. But before the measure could become law it was brought to notice that one of its provisions appeared to conflict with the Civil Procedure Code, and that the measure was therefore beyond the competence

of the Bengal Council. Consequently it was decided that legislation should be undertaken by the Council of the Governor General.

"The sections of the present Bill, which relate to the new class of disqualified proprietors, are practically the same as those of the Bill which was discussed in the Bengal Council, and they do not materially differ from what is actually the law in other Provinces. They fall far short of the provisions of the law on the same subject which prevails in one part of this Province,—I mean the Chota Nagpore Encumbered Estates Act,—and I do not think it necessary therefore to take up the time of the Council by any discussion of the policy of this part of the measure.

"Another section in the Bill extends the definition of 'estate' in section 3 of Bengal Act IX of 1879 so as to make it cover 'a portion of an estate.' The Bengal Board of Revenue have pointed out that under section 7 of the Act the Court of Wards can only take charge of the property of disqualified proprietors who are either sole proprietors or joint proprietors of an estate, and that this has been held to exclude from the jurisdiction of the Court of Wards proprietors of only shares of estates, however large their entire property may be, while the Court is enabled to, and as a matter of fact does, take charge of properties mainly composed of many shares of estates, provided only that the proprietor has one whole estate, no matter how small. The Board point out that this condition is not required in the cases of properties made over to the Court of Wards by Civil Courts under section 10 of Act IX of 1879 or to the Collector under Act VIII of 1890, and that the restriction does not obtain in certain other Provinces, amongst which the North-Western Provinces may be instanced. They adduce, as an instance of the defective state of the present law, the case of the great Bonalli Raj, with a rent-roll of about 12 lakhs of rupees, seven-sixteenths of which are held by a major proprietor and nine-sixteenths by two minor proprietors. The Court of Wards is unable to take over charge of the latter as the minors do not hold a single entire estate entered in the revenue-roll. Some of the Members of Council are aware that there has lately been a great lawsuit between the major and minor proprietors of this estate, which, after an expenditure of, it is said, between 8 and 9 lakhs of rupees, was settled by a compromise, part of the terms of which was that the whole estate should be managed by the Collector, who would take over the major's share at his own request and that of the minors under the Court of Wards. This arrangement, however, has been found to be impracticable under the existing state of the law, and if the present state of things continues this great and historic estate will probably be irretrievably ruined.

"There are some other amendments of the Bengal Wards Act contained in the Bill of a purely formal nature. They have been made necessary by the repeal of Act XL of 1858, and require no further explanation here.

"It is proposed to omit the proviso to section 48 of Act IX (B.C.) of 1879 making the consent of the Lieutenant-Governor and the Court of Wards necessary to the expenditure of more than ten per cent. of the previous year's surplus, as it has been found that this proviso only causes unnecessary delay, without providing any additional security for the proper expenditure of the funds.

"The objects of the remaining sections of the Bill are to provide that probate and letters of administration may be taken out by the Court of Wards in that capacity, and the conditions on which such probate and letters of administration may be granted; that the Court of Wards shall be the guardian of a minor when such minor is the sole executor or residuary legatee, &c., and belongs to the class to which the jurisdiction of the Court of Wards extends; that it should have power to take charge of properties of disqualified proprietors at the request of private executors and administrators; that it should be exempt under certain conditions from liability to giving security and rendering accounts to the Civil Court; and that estates administered by the Court of Wards under these sections should be exempt from sale on account of arrears of revenue.

"The discussions which have led to the introduction of these provisions are of old date, having arisen, in the year 1883-84, out of several cases which occurred about that time, the most important of which was one connected with the will of Raja Pramathà Nath Roy Bahadur of Dighaputtia, a very wealthy zamindar, who left four minor sons and by his will made the Court of Wards executor until the coming of age of his eldest son. It was found, however, that the Court of Wards could not take out probate and act as executor, and practically the existence of the will, which the testator meant to strengthen the position of the Court, was found to be an almost insurmountable obstacle to the exercise of the powers vested in the Court by statute. All the Local Governments and Administrations have been consulted on the subject and have reported generally in favour of the alteration in the law which it is now proposed to make, but it has been decided to legislate for the present only for Bengal.

"The Bonalli Raj case, to which I have already referred, shows clearly that it is most desirable that the changes proposed with regard to disqualified proprietors should be made with the least possible delay, and as the most import-

ant alterations in the Bengal Act of 1879 have been before the public for a year and have been discussed in the Bengal Council, and as the Bill in its present form has been already published under Rule 22 in the Gazette of India and Calcutta and Vernacular Gazettes, I trust that the Council may be able to dispose of it before the close of the present session, and I shall therefore ask the Council to instruct the Select Committee to report in a week."

The Motion was put and agreed to.

BENGAL MILITARY POLICE BILL.

The Hon'ble SIR JOHN EDGAR also introduced the Bill for the Regulation of the Bengal Military Police and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller, the Hon'ble Mr. Evans, the Hon'ble Dr. Rash Behari Ghose and the Mover, with instructions to report in a fortnight. He said:—

"The Bill which I am about to introduce does not require any lengthened explanations. It has been made necessary by the removal of the Frontier Police Force formerly employed in the Hill Tracts of Chittagong to the new district, the South Lushai Hills. The discipline of this force has hitherto been regulated by the Chittagong Hill Tracts Frontier Regulation of 1881, but as this applied only to frontier police-officers posted to the Hill Tracts of Chittagong it has apparently become inapplicable to them now that they are posted to the new district, the South Lushai Hills, and it has been thought safer to provide by fresh legislation for their discipline in future. Experience has also shown that a change is required in the terms of enlistment of the force. Hitherto all the men have been entitled to resign on giving their superior officer two months' notice in writing as provided in section 9 of Act V of 1861, but experience has shown that this might become a source of inconvenience and even of danger in the case of a force employed amongst tribes like those of the Lushai Hills. It has been therefore decided to enlist the men of this force for three years as is done in the case of the Burma Military Police, and also to provide that if they are on active service at the time when their engagement expires they shall not be entitled to claim their discharge until such active service is at an end.

"Besides the police force lately employed in the Chittagong Hill Tracts, and now employed in the South Lushai Hills, there are certain bodies of semi-

military police in Bengal known as special reserves, and it has been found desirable to provide for the enlistment and discipline of these bodies and of any similar bodies which may hereafter be formed, upon the same lines as those laid down for the frontier force. The present Bill, which provides the above objects, follows very closely the Burma Military Police Act, XV of 1887, with the omission of one section. I do not think it is necessary for me therefore to take up the time of the Council with any detailed examination of its provisions. Under Your Lordship's orders it has already been published in the Gazette of India and in the Calcutta and Vernacular Gazettes in the manner provided by Rule 22 of the Rules for the Conduct of Business in this Council."

The Motion was put and agreed to.

The Council adjourned to Friday, the 11th March, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 4th March, 1892.

(See also pages 45 & 73)
For Select Committee's Report see Gazette of India, March 26th, 1892.

Government of India Central Printing Office.—No. 497 L. D.—8-3-92.—300.—A. E. deS.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 11th March, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble H. W. Bliss, C.I.E.
The Hon'ble J. Nugent.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS said:—

"I was to have presented to-day the final Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras, but I regret to say that it is not ready. The papers did not arrive from Madras till Monday, and then they had to be printed, as there was only one copy. The Committee has, however, held one meeting, at which it discussed, as far as time permitted, a long list of suggestions upon points in which the draft has been thought to be defective. Some of these defects undoubtedly exist, and as to one at least, which is likely to have a material effect on the constitution of the new Court, our opinions were equally divided. All these suggestions emanate from the High Court or Government, and ought, in our opinion, to be seen and

considered by the people with whose interests the new Court will have to deal Moreover, there has been a very general complaint that the time allowed for scrutiny of the Bill has been too short In these circumstances we are unanimously of opinion that it will be better not to take the Bill into final consideration within the short remainder of the present session, and that it ought when fully revised to be re-published.

"In lieu, therefore, of the Motion standing opposite my name I will now, with Your Excellency's permission, move —

That the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be allowed to present a further Report on or before the 25th instant and to defer its final Report *sine die*"

The Hon'ble SIR ALEXANDER MILLER said —

"I should like before the Motion is put to say one word with regard to the point upon which it has been mentioned that our opinion was equally divided and to explain that in giving the casting vote which it became my duty to give I did so not with reference to my own opinion but following the view taken by the Government of Madras It occurred to me that that was the proper way to exercise the casting vote where the Committee was equally divided, and therefore I should be glad that the point in question should be re-submitted to the Government of Madras, because, if they should alter their opinion, it may alter that of the Select Committee."

The Motion was put and agreed to

RANGOON PORT COMMISSIONERS ACT, 1879, AMENDMENT BILL

The Hon'ble MR BLISS moved that the Report of the Select Committee on the Bill to amend the Rangoon Port Commissioners Act, 1879, be taken into consideration He said —

"I have little to add to the Report of the Select Committee which is before the Council

"The proposal that the meetings of the Rangoon Port Commissioners should be open to the public came from a private source, and seemed worthy of adoption The Select Committee was, however, unable to accept the proposal without any qualification Even in respect to the transaction of such business

as the consideration of tenders put in by members of the Port Commission with the permission of the Local Government, for which it is now proposed to provide, it is evident that public debates might be most inconvenient. Members of the Port Commission may not be the only tenderers; other tenders may be put in by persons who are less well known; and in such cases it may be necessary to consider both the pecuniary and the professional competence of such other persons. The conduct and character of subordinates is another matter which it may at any time be necessary for the Port Commissioners to discuss. No doubt, in all such cases a *bonâ fide* discussion would be privileged; but it would none the less be most inconvenient and injurious to the free expression of opinion, and therefore prejudicial to the interests of the port, that such discussions should take place in the presence of reporters and be spread all over the place in the next morning's papers. The Select Committee was therefore of opinion that a legal power of declaring meetings of the Port Commissioners closed to the public should be reserved, and should be vested in the person presiding at the time, who will be responsible for the proper exercise of the discretion entrusted to him.

"The other additions now made to the Bill as it originally stood either emanated from the Local Government or are in accordance with the recommendations of the Port Commissioners supported by the Local Government. They will save a good deal of trouble and will facilitate the working of the port; and, as they do not go beyond the provisions of law applicable to other similar cases, it appeared to the Select Committee that they were not likely to be objected to by the public. Hence the recommendation that the Bill should be passed without re-publication.

"I may add that, on careful consideration, it appeared to the Select Committee inadvisable to adopt a proposal of the Port Commissioners that their power of sanctioning new works, without reference to the Local Government, should be considerably enhanced. A reference to the Local Government should never cause serious delay, and secures the advantage that all considerable projects must be reviewed by competent professional authorities, independent of those responsible for their preparation."

The Hon'ble MR. MACKAY said:—

"My Lord, the Bill now before your Excellency's Council contains a provision which, I believe, is foreign to all other Indian Port Trust Acts, and in this way it marks a new departure. Sub-section (*g*), which it is proposed to

add to section 60 of the Act, provides that the meetings of the Commissioners shall be thrown open to the public except in such particular cases as the President may otherwise direct, and the provision, in my opinion, with the reservation, is a salutary one. The more light that is let in on the proceedings and projects of public bodies such as Port Commissioners, whose operations may do much to forward or retard the prosperity of the country and the progress of trade, the more likely are we to find prudence guiding their counsels, and I am therefore in favour of the new departure now proposed."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

COURT OF WARDS ACT, 1879 (B.C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR presented the Report of the Select Committee on the Bill to amend the Court of Wards Act, 1879 (B.C.).

LAND ACQUISITION ACT, 1870, AMENDMENT BILL.

The Hon'ble MR. BLISS moved for leave to introduce a Bill to amend the Land Acquisition Act, 1870. He said:—

"I must begin by explaining that I have not undertaken the preparation and introduction of this Bill on my own initiative, but at the request of my hon'ble friend Sir Philip Hutchins, and with the advantage of access to the reports which have been received from Local Governments, and to the communications which have passed between the different departments of the Government of India, during a period of nearly ten years, on the question of the amendment of the Land Acquisition Act.

"The subject of the acquisition of land for public purposes and for Companies is one of considerable importance, both to the public fisc and to the proprietors and occupiers of land throughout the country. The system under which land is acquired and compensation settled is peculiar and somewhat complicated. It may, therefore, be convenient that I should give some account of preceding and existing legislation dealing with the subject, before stating the defects which have been found, in practice, in the latter, and the remedies which it is proposed to apply.

"The earliest Act dealing with the subject which it is necessary to mention was Act VI of 1857, which was repealed by the law now in force. The method therein adopted of assessing compensation in disputed cases was an unfortunate one. The Act left the whole matter to the judgment of arbitrators, against whose decision there was no appeal whatever, unless upon the ground of corruption or misconduct, which were practically impossible of proof. The law contained, moreover, no statement of the principles which shoul guide the arbitrators in their awards, and imposed on them no obligation to give any reasons for their findings. The result was that, in the words of the then Advocate General, the public money was absolutely thrown away; indeed, in one case, he went further and said that the practical working of the law had led to something like robbery of the public money.

"In moving for leave to introduce, and also in introducing, the Bill which, after many changes and much consideration, ultimately became Act X of 1870, the Hon'ble Mr. (now Sir John) Strachey gave illustrations of the waste of the public money to which this system of unqualified arbitration had led, and proposed, first, that, instead of arbitrators, against whose decision there was no appeal, selected judicial officers, assisted by assessors, should determine the value of the land to be acquired in all cases in which it was disputed; secondly, that if the Judge differed from the majority of the assessors as to the value of the land, an appeal should be allowed to the High Court, whose decision would be final; and, thirdly, that the law should distinctly prescribe those considerations which should, respectively, be taken into account, and be neglected, in determining the amount of compensation which should be allowed. These proposals form a principal part of the law as it now stands. They were a great improvement on the law previously in force, but have not, in practice, worked in an entirely satisfactory manner.

"The procedure for the acquisition of land under the existing law is as follows:—

"On its appearing to the Local Government that land in any locality is likely to be required for a public purpose, a notification to that effect is published; and the proper officers are thereupon authorised to enter upon any land in that locality, to survey the same, to examine the sub-soil and to do all other acts, including the marking-out of the land, necessary to determine the fitness of the land for the proposed public purpose and the boundaries of the precise area which will be needed therefor; and for all damage done by such entry on

and marking-out of the land the officers entering thereon are required at once to pay such sum as may be agreed upon, or as, in case of dispute, shall be decided by the Collector to be proper. This part of the Act may be extended to the entry on, and marking-out of, land by the officers of Companies.

"The particular land which will be needed having been thus ascertained, a formal declaration has to be published by the Local Government that it is so needed, and for what purpose it is needed; and it is provided that such declaration shall be conclusive evidence that the land is needed for a public purpose, or for a Company, but shall not be made unless the compensation to be awarded is to be paid out of the public revenues, or from some Municipal Fund, or by a Company. Herein is a matter in regard to which an amendment of the existing law seems desirable. When the Act was passed, District or Local Funds hardly existed. They were therefore not mentioned. Now, their operations extend to almost, or quite, the whole of India. But it has been held by the Law Officers of the Bombay Government that the Act, as it stands, does not warrant the compulsory acquisition of land for such purposes as the construction of a local road or the erection of a school-house from Local Funds. Obviously it should do so.

"The declaration having been issued, the Collector proceeds to have the land measured and sends notices to all persons interested therein to appear before him and state their claims to compensation. This part of the Act also needs amendment, to enable land-owners to object, if they think fit, to the measurement of the land made under the Collector's orders.

"The next step is that the Collector proceeds to enquire into the value of the land and to determine the amount of compensation which should be allowed for it. In doing so, he is guided by the principles laid down for the guidance of the Court in sections 24 and 25, to which I shall refer again. His award is final, only if he and the persons interested agree as to the amount and apportionment of the compensation. If not, or if any one of the persons interested, no matter to how small an extent, fails to attend in obedience to the Collector's summons, or if any question of title arises, the Collector has no option but to refer to the Court the whole case of the settlement and distribution of the compensation. Pending the decision of the Court, however, the Collector may take possession of the land. To this part of the Act serious practical objections exist, to which I will revert.

"The procedure of the Court, on a reference being made to it by the Collector, is regulated by Part III of the Act, and is peculiar. The Collector on the one hand, and the persons interested on the other, are required each to appoint one qualified assessor; and the two assessors and the Judge, sitting together, then proceed to determine the amount of the compensation to be allowed. For their guidance in doing so, sections 24 and 25 of the Act lay down what matters they are to consider, and what matters they are to neglect. Among the matters to be considered are the market-value and the damage caused by severance, by the injurious effects of the acquisition on the other property of the person interested and by the expense of a change of residence, if such is necessitated. The time as at which all these matters are to be valued is the time of awarding compensation. Among the matters to be neglected are, the degree of urgency which has led to the acquisition, the disinclination of the person interested to part with his property, and any increase in the value either of the land acquired, or of the other land of the person interested, which is likely to accrue from the use to which the land acquired will be put. It is then provided that the compensation awarded shall not be less than the amount tendered by the Collector, nor more than the amount claimed by the person interested; that if the Judge and one or both of the assessors agree as to the amount of compensation, their decision shall be final; that, if the Judge and the assessors disagree, the opinion of the former shall prevail, subject to an appeal, which usually lies to the High Court; that the assessors shall be paid fees not exceeding Rs. 500 each; that the Collector shall pay all the costs *pendente lite;* and that the Collector shall be finally cast in all costs, if the amount ultimately awarded exceeds, by ever so little, the amount of his original tender. In a separate part of the Act (Part IV), it is provided that disputes as to the apportionment of the Collector's award shall be settled by the Judge sitting alone.

"Part V of the Act deals with the payment of the compensation by the Collector, and provides that, in consideration of the compulsory nature of the acquisition, the Collector shall pay, in addition to the amount of compensation awarded, whether by himself or by the Court, a further sum of 15 per cent. on the market-value of the land. To this provision for the compensation of land-holders, so far as is possible, for the sentimental injuries often inflicted on them by depriving them of their property for the public benefit, there can be no objection. But to the further provision of section 42, that the Collector shall pay interest on the amount of the compensation (including the addition of 15 per cent.) from the time he has taken possession of the land, it seems

to me that objections may justly be felt from the point of view of the public revenue. In nine cases out of ten—I might almost say in ninety-nine cases out of a hundred—the fact that compensation is not paid at the time possession is taken is due to the default of the persons interested in the land. Sometimes they raise unreasonable, and even frivolous, objections to the amount or the apportionment of the Collector's award. Sometimes they fail to attend at his enquiry, and thus compel him to throw the matter into Court. I cannot see why, in such cases, the public revenues should be burdened by the necessity of the payment of interest. Provided that the right is reserved to the persons interested to question the Collector's award, without prejudice from the fact that they have received its amount as a part payment, no liability to pay interest should subsist because they have declined to accept part payment or because they have been unwilling to agree among themselves as to the proportions in which they should share the payment tendered to them. In other words, interest should be payable only on any addition which the Court may make to the amount of compensation tendered by the Collector, on the amount of compensation by any accident not tendered at the time possession is taken of the land, and on the amount of the costs which the Collector may ultimately be ordered to pay to the persons interested. The Bill provides for the alteration of the law in accordance with these views.

"Part VI of the Act provides a simpler procedure for the acquisition of land, the temporary use only of which is desired as, for instance, for the excavation or storage of materials in the case of the construction of a railway. In case of disputes arising, in consequence of such temporary acquisitions, as to the amount of compensation to be paid, the Judge, sitting alone, is empowered to give a final decision. To this procedure no objection has been raised or can reasonably be felt. The Act makes no provision for the costs of references under this Part. The Bill supplies this omission, which was apparently accidental.

"Part VII of the Act lays down the procedure to be adopted when it is sought to acquire land for Companies. It indicates, though perhaps not so clearly as is desirable, that it is not intended that the law shall be put in force for the acquisition of land for all Companies, even though registered under the Indian Companies Act of 1882, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent. It is not intended, that is to say, that the Act shall be used for the acquisition of land for any Company in which the public has merely an indirect interest and of the works carried out by which the public can make no direct use. The Act cannot therefore be put in motion for the benefit

of such a Company as a Spinning or Weaving Company or as an Iron Foundry, for although the works of such Companies are distinctly 'likely to prove useful to the public' (to use the words of section 48), it is not possible to predicate of them 'the terms on which the public shall be entitled to use' them—a condition precedent to the acquisition of land laid down in section 49. On the other hand, if the Government determined to entrust to a Company the working of coal or other minerals owned by it, on such conditions as to the payment of royalties or otherwise as it might deem fit, the operations of such a Company would be for a public purpose, for the furtherance of which the provisions of the Act might properly be applied. I mention this point because the question of the kind of Companies, for the purposes of which land may be acquired under the Act, has more than once been raised; and it is important both that the public should understand that the Act will not be used in furtherance of private speculations and that the Local Governments should not be subject to pressure, which it might possibly sometimes be difficult to resist, on behalf of enterprises in which the public have no direct interest. The only defect which has been found in this part of the Act is that its terms are such as to throw unnecessary difficulties in the way of the acquisition of land for Companies, such as Railway Companies, for the purposes of which the Government has contracted to provide land, and which are therefore, so far, Government undertakings. The Bill contains provisions which are designed to obviate those difficulties and to simplify the procedure applicable to such cases

"Part VIII of the Act contains the usual miscellaneous provisions, two only of which are of present interest. One of these relates to the right of Government to withdraw from an acquisition of land once embarked upon. As the law now stands, it cannot do so if the Collector has made an award or a reference to the Court. But this seems an unnecessary restriction. A case has been reported by the Bengal Board of Revenue in which it was sought to acquire for the purposes of a Railway Company a small piece of land, of which it was already in occupation as a tenant at a yearly rent of Rs. 12-10-5. The value of the land was estimated at Rs. 330, for which sum it might have been worth while to acquire the freehold. When, however, the Collector came to enquire into the claims of the persons interested in the land, whose interests turned out to be complicated and conflicting, and undefined to an extent not known, or at least not recognized, at the time the estimate was framed, he awarded no less a sum for the land than Rs. 6,859. In such a case the Government should certainly be allowed to withdraw from the acquisition of land on payment of all costs and damages incurred and sustained by the other side; and I have so provided in the Bill.

"The other point in regard to which this Part needs alteration is with respect to the powers of Government in cases in which exorbitant damages are claimed on account of severance. It is considered that, in such cases, the Government should have the power of, at any time, deciding to take up the whole property. A provision to this effect appears to be the proper correlative to the existing provision of law that the owner of property, a part only of which it is proposed to take up, may compel the Government to acquire the whole.

"I must now revert to those parts of the Act which deal with the Collector's enquiry and award and with references to the Court and the procedure of the Court thereon. The first objection to be taken to them is that the power of the Collector is injuriously limited. The average Collector is probably better qualified than the average District Judge to form a correct opinion as to the value of land; he is quite as much to be trusted as the Judge to do justice between the Government and the claimants, and is in most cases not less capable of fairly deciding how the compensation should be distributed; and, at least as far as regards the agricultural classes, he is more in touch with the people than the Judge, and his decision is more likely to be received by them with acquiescence. Nevertheless, he has no real power under the Act. No matter how trivial or how absurd the difference of opinion as to the value of the land, or how palpably exorbitant the demands made, he cannot enforce his award, but is obliged to make a reference to the Court. The same rule applies, both if, out of fifty persons interested, one only fails to attend—a common case when it is sought to acquire land belonging to a village community, the presence of every member of which it is practically impossible to secure;—and also if the interest of any person affected is so slight that he will not take the trouble to attend before the Collector, even though legally punishable for neglect to do so, also a very common case. A good instance of this is given in the papers to which I have had access. In a case referred to the Court of Mr. Charles, the Additional Judge of the 24-Pergunnahs, specially appointed for the disposal of land-acquisition cases arising out of the construction of the Kidderpore Docks, the compensation awarded amounted to 2 annas 9 pies. Naturally enough, the parties interested in these few feet, or yards, of land did not appear before the Collector. The consequence was that they had to pay Court costs amounting to Rs. 2-8, or fourteen times the value of the land; and if the Judge had not disposed of the case (illegally, as it seems to me) by himself, instead of appointing assessors, the costs would have been ten times as much as they were. Nor is this a solitary instance of an absolutely trivial case being perforce referred to this same officer. Within a period of eighteen months, all the elaborate machinery

of his Court, aided by assessors, was set in motion in eleven cases in which the compensation awarded was less than Rs. 10 and in 29 cases in which it was less than Rs. 20. Mr. Heysham, a Deputy Collector who was for twelve years employed on land acquisition in, and in the neighbourhood of, Calcutta, and who has furnished a valuable report on the working of the Act, reports such cases to be numerous, and points out that the Act gives the Collector no option but to drive defaulters into the Civil Court against their own will and much to their detriment, and also to the inconvenience of the Collector and the unnecessary increase of, and delay in, business in the Civil Courts. Nor is this all. The whole of this, in many cases quite unnecessary, business, that is thus thrust upon the Civil Courts, has to be transacted at the sole cost of Government; for in no case are any court-fees charged, not even when the questions referred are as to the title to the land or any rights thereto or interests therein, regarding which conflicting claims are set up, or are as to the apportionment among the persons interested of the compensation awarded by the Collector, all of which are questions of purely private interest, in which the Government, as the custodian of the public interests, is in no way concerned. And the injustice, as I consider it, to the Government does not end here. The Collector is burdened with the whole of the costs of the Court's enquiry—often a very considerable sum—if his award is enhanced by ever so small a sum. A man might, for instance, be offered by the Collector seventy thousand rupees for a piece of land sought to be acquired; he might claim a lakh; and the Court might award him R70,050 only. Yet the Collector would have to pay the whole of the costs, not to speak of interest on the whole sum, for a period which might extend to two or three years. I cannot consider this just. The community has its rights in such matters, as well as the private individuals with whom it deals through the agency of the officers of Government. It is obvious also that the direct and strong tendency of the existing provisions as to costs is to stimulate claimants to object to the Collector's award and to encourage them in preferring extravagant claims. The law should not lend itself to this.

"Then there is the question of the employment of assessors to aid the Court. The Act provides for the appointment of qualified assessors, but it omits to define the word "qualified," and it must be obvious to every one who is acquainted with the circumstances of this country that "qualified" assessors are not obtainable here, in the sense in which the word "qualified" will usually be understood, that is, qualified by education and by practical experience of the matters on which they are required to pronounce opinions. In England there

are many men, in all parts of the country, who make land valuation the business of their lives. In this country, there are no such persons, save perhaps a very few in three or four of the larger towns. What happens in practice is that the person interested appoints an assessor, who is virtually pledged beforehand to endeavour to protect and advance his interests. The Collector's assessor is under no such understanding, it is true, but is very probably indisposed to go against the Collector. The assessors are supposed to be remunerated by the fees provided for by the Act, but it is credibly reported that in heavy cases the claimant's assessors receive additional fees by private arrangement, while it is certain that the Collector cannot secure the services of competent persons from want of power to grant them adequate remuneration. Under all the circumstances, it seems to me idle to suppose that the employment of assessors can in any way lighten the labours of the Court, or relieve it of responsibility, or ensure justice as between the Government and the persons interested.

"Another point as to which difficulties have arisen is that of the determination of the market-value of the land to be acquired. This has to be fixed as at the time of awarding compensation. But the award of compensation may not, frequently does not, take place for two or three years after the land has been taken possession of by the Collector. In the meantime, on the one hand, the buildings on the land, which constituted its main value, may have been removed to make room for a railway; or, on the other hand, a spacious public office may have been erected on what was a mere rubbish depôt at the time when the Collector took possession. Can any one argue that such alterations ought to affect the amount of compensation to be paid for the land? Certainly not. Yet they undoubtedly must, as the law now stands. It is clear, in my opinion, that the market-value should be fixed as at the date on which the Government gave notice of its intention to acquire the land. Nothing occurring subsequently to that date should be allowed to affect the question. Neither should the market-value be lessened by the destruction by the Government of the buildings then standing on the land, nor should the owner be allowed to do anything to enhance the market-value before the date on which the Collector takes possession, as, for instance, by the erection of new buildings or by the execution of leases for fancy rents. In this respect, evidently, the law requires amendment. A definition also seems to be needed of the word "market-value." In the case of Prem Chand Burral and another *versus* The Collector of Calcutta (Indian Law Reports, 2 Calcutta, 103), it was held that 'the fairest principle was to ascertain what is the market-value of the property, not according to its present disposition, but laid out in the most

lucrative and advantageous way in which the owners could dispose of it.' As to this, I will only say that, if this is indeed the proper interpretation of the existing law, it is high time that the law was altered and the word 'market-value' clearly defined for the guidance of the Courts. I consider that it means, or at least ought to mean, no more than the sum for which the land might reasonably have been expected to have been sold, if put up to auction, without undue haste and under ordinary circumstances, immediately before the Government signified its intention to acquire it; and I have so provided in the Bill. But the definition of this term is not altogether free from doubt, for I understand that in some parts of the country the circumstances are such that really valuable lands are not readily saleable and have therefore but a small 'market-value' in the sense in which I should understand the term. The matter will no doubt receive careful consideration at the hands of the Select Committee to which the Bill is referred.

"A further ground of objection to the existing law is that, if the Judge and one of the assessors are agreed, there are no means of appealing, or even of obtaining a review of judgment, even in cases in which the award is based on a palpable error as to the facts. In one case which has been reported, the Judge confused local and standard bighas, one of which was double the area of the other, and applied the rates of value estimated for one standard to the other. In another case, the Judge illegally appointed four assessors, and, in agreement with one only of them, enhanced the Collector's award from Rs. 665 to Rs. 2,374. In neither of these cases could the Government obtain any redress, but was forced to pay the amount awarded.

"I could cite, from the papers placed in my hands, numerous other instances of hardship, and even of injustice, due to the provisions of the existing law, and affecting, sometimes property-owners, but more often the public, whose money is wasted. But I think I have said enough to convince both the Council and the public that the amendment of the law is urgently required. As to the form which that amendment should assume, it has been decided, after full and careful consideration, that the best plan will be to dispense with the necessity of the Collector's reference to the Court and with the employment of assessors, and to empower the Collector to make an award, which shall be binding on all concerned, both as to the amount and as to the apportionment of the compensation, unless altered by the decree of a competent Court in a regular suit. It may be objected to this proposal that the Collector is an executive officer, appointed by and the creature of the Local Government, to whom it is not proper

to assign such extensive powers relating to private property. But I know no reason why an executive officer should not be as careful and as just a man as a judicial officer; and if the Collector is appointed, and may be removed, by the Local Government, the same may be said of every District Judge in the country. I am pleased also to be able to say that the earliest proposal to enhance the Collector's jurisdiction in the way proposed came from a Bengali gentleman, Babu Mohiny Mohun Roy, who has published a useful pamphlet on the subject of the Land Acquisition Act, with suggestions for its amendment. But, in truth, there is no novelty in the proposal to permit executive officers to make awards which shall be binding unless set aside by a regular suit. By Act XXVIII of 1860, for example, relating to the survey of the Madras Presidency, if a boundary is in dispute, and if the disputing parties do not agree to go to arbitration or fail to attend for the investigation of the dispute, the survey officer may dispose of the case *ex parte*, and his decision is final until set aside by the decree in a regular suit; and there are similar provisions in most, if not all, of the Forest Acts in force in different parts of India. For instance, under the Indian Forest Act (VII of 1878), the only appeal allowed to persons who are dissatisfied with the decision of the Forest-settlement-officer (an officer appointed *ad hoc* by the Local Government) in regard to claims to rights of pasture or to forest-produce, is either to a Revenue-officer (of not lower rank than a Collector or a Deputy Commissioner), appointed by the Local Government to hear such appeals, or to a Forest Court, consisting of three persons, appointed by the Local Government for the special purpose of hearing such appeals. Now, it cannot be denied that rights of pasture or to forest-produce may be as valuable as any other rights of property, or that it is going a long way to empower Local Governments to appoint the judges in their own causes. Yet I do not remember hearing of any complaints of injustice being done in these forest cases. There are similar provisions in the Forest Acts in force in Madras and Burma. To boundary disputes, the Government is a party oftener than not; and it will not be denied that the determination of a boundary dispute may involve enquiries into the ownership of property of quite as much value as any that is likely to be taken up under the Land Acquisition Act. There have been recently, to my personal knowledge, several such cases in which the ownership of very valuable forests, extending over hundreds of square miles, has come before the Courts in the shape of suits to set aside the decisions of Survey or Forest-settlement Officers. I have never heard any complaints of this procedure, or that it has in any way worked injustice. The same kind of procedure also prevails, I understand, in the case of land-revenue settlements in several provinces, and with excellent effect, the decisions of the Settlement-officers being, as a rule, accepted without question.

And there is in Burma an exact precedent for the course I advocate, of giving Collectors greater power under the Land Acquisition Act. By the Upper Burma Land Acquisition Regulation (IX of 1886), the Collector decides not only the amount of compensation (sections 11—13), but also (section 17) the apportionment of the compensation; and from his decision no appeal lies (section 37), though the Local Government may revise or cancel any order passed by him or may refer any point for decision by any Civil Court. If this procedure is not unjust in Burma, *à fortiori* it is not unjust to vest Collectors generally with the full powers I propose to give them, subject to the right of appeal, by either side, by the institution of a suit in a Civil Court. I feel therefore that I can with confidence recommend the proposed change in the law to the acceptance of the Council, especially as I understand that there will be no objection on the part of my hon'ble friend Sir David Barbour to my proposal that, in relation to the Court-fees Act, the measure of value of suits to enhance the amount of a Collector's award shall be only the excess claimed over the amount of the award, not the total amount of the claim. While, then, the law will no longer positively encourage extravagant claims to the injury of the public, and will put no unfair burden on the Government, it will but lightly press on those who think that the Collector's award has not done them justice. Suits as to title and as to the apportionment of compensation are private matters, of course, with which the Government is in no way concerned, and will be governed by the ordinary rules of valuation. I am sanguine that the result will be seen in a great decrease in the number of land-acquisition cases brought before the Courts, and in the consequent more speedy administration of justice in those Courts, in the suits between private persons which it is their primary duty to determine; while the petty landholders, whose interests are now so injuriously affected by the necessity imposed on the Collector of referring to the Court every trifling dispute and every *ex parte* case, will obtain a very great and welcome relief.

"I regret that I have been obliged to occupy the attention of the Council for so long a time, but I have been anxious to make it quite clear that the amendment of the existing law is essential in order to protect the public revenue. No doubt it will be necessary, with this object, to restrict the facilities now enjoyed by landholders, whose property is acquired by Government for the construction of public works, for obtaining compensation on a scale entirely satisfactory to themselves. But I trust that the public generally will remember that, in such a matter as this, the Government is not a separate entity, dealing with funds with which they have no concern, but their own representative, deal-

ing with their own money, and bound to protect their interests against extravagant and unscrupulous claims.

"I may add that it is not proposed to proceed with the Bill until ample opportunity has been allowed to the Local Governments, and to others interested in the subject, to consider it and to express their views upon it."

The Motion was put and agreed to.

The Hon'ble MR. BLISS also introduced the Bill.

The Hon'ble MR. BLISS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 18th March, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 11th March, 1892.

Government of India Central Printing Office.—No. 497 L. D.—1892.—[illegible].—A. E. [illegible].

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 18th March, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General H Brackenbury, C.B., R.A.
The Hon'ble Colonel R. C. B. Pemberton, R.E.
The Hon'ble H. W. Bliss, C I.E.
The Hon'ble J. Nugent.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rash Behari Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

BENGAL MILITARY POLICE BILL.

The Hon'ble SIR JOHN EDGAR presented the Report of the Select Committee on the Bill for the Regulation of the Bengal Military Police.

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Indian Limitation Act, 1877, and the Code of Civil Procedure. He said:—

"Before I explain the reason why it has been thought necessary to introduce this Bill, I wish to say one or two words to make it quite clear as to what the position, as I take it, of the Legislature in this matter is. In the construction of an Act of Parliament, or an Act of this Legislature, it is clear that the

Courts of Law are the only authority that can decide as to what is the true construction, and that where two High Courts have, as in this case has happened in three instances, come to different conclusions upon the true construction of an Act, there is no authority in India which has any right to say which of the two High Courts is right and which is wrong. It may be that both are right or both wrong; but what the Legislature has a right to do is this: if it considers either that one of the two conflicting views ought to prevail for the future, or that some view different from either would be the best rule to introduce for the future, it can alter the law so as to put an end to the conflict of authority without expressing any opinion as to which conclusion was right or which was wrong in the past.

"This is the course which I am about to ask the Council to take in regard to three cases in which a difference of opinion has arisen between different High Courts in this country.

"The first is a comparatively small matter. In the construction of the Limitation Act the Court at Calcutta has taken one view as to the manner in which time for obtaining copies of decrees ought to be counted for purposes of appeal. The Court at Madras has, I understand, taken a different view; and as long as each Court consistently follows its own view, as a mere matter of law procedure, no harm is done; but it so happened that the Court in the North-Western Provinces, after following for some time the practice of the Calcutta Court, suddenly discovered in a case reported in the 12th volume of the Allahabad series of the Indian Law Reports that that view was wrong and that it ought to have adopted the practice of the Madras Court. The consequence is that a number of cases which would have been in time if the Court had continued to follow its old practice were thrown out of time by the change of practice. That no doubt was felt to be a hardship, and the first section of the Bill is designed to prevent the occurrence of a similar hardship in the future. I may say that the form in which the first section has been put was suggested by the Chief Justice of the Allahabad Court himself with a view to prevent the operation in the future of such a decision as that to which I have referred: so that it is introduced here with, if I may say so, the full co-operation, with the full concurrence and approbation, of the Judge against whom it might otherwise be supposed that the section was directed.

"The second and fourth clauses of the Bill refer to a somewhat different case. It had been decided again and again by the High Court in Calcutta that

the twenty-second chapter of the Code of Civil Procedure, which refers to what I may, for convenience, call cases of nonsuit, has no application to proceedings after decree. By an interpretation of the 647th section of the Code, which differed from that put upon it by the Court of Calcutta, the Court of the North-Western Provinces has come to the conclusion that Chapter XXII does refer to proceedings after decree. Without saying which is right and which is wrong, I personally, and I think I may say the Executive Department most concerned, are strongly of opinion that that chapter ought not to refer to such proceedings; and that, whether it does do so or not, we ought to declare that it shall not do so for the future; and accordingly the second section of the Bill proposes to add to Chapter XXII of the Code of Civil Procedure a clause providing that nothing in that Chapter shall have any application to any proceedings subsequent to a decree; and the fourth section of the Bill proposes to add to section 647 an explanation which will prevent the same interpretation being put upon it in future as that which has been put upon it by the Allahabad Court.

"Finally, the third section of the Bill, which I have passed over for a moment, applies to a case in which I am not sure that there is a difference of opinion between two High Courts, but in which an interpretation has been put upon the limitation in respect of memoranda of appeal and applications for review of judgment, which has had this effect, that where a memorandum of appeal has been presented in proper time, and has been duly received, bearing a stamp which at the time when it was presented was supposed both by the appellant and by the Registrar of the Court to be sufficient, but where, after the time for appealing had expired, it was discovered that the stamp was insufficient, the Court has held that there was no proper memorandum of appeal, for want of a proper stamp, that it was too late to amend the error, and that therefore the appeal failed.

"I think that it will be obvious to every one that where there is a *bonâ fide* mistake of that kind which is not discovered until it is too late, and where the applicant is ready and willing to amend it as soon as he has discovered it, the appellant ought not to have his suit fail upon the merits merely because he and the officer of the Court had been under a mistake as to what stamp ought to have been affixed.

"We accordingly propose to add a section to the Code of Civil Procedure to the effect that if an appeal is presented which is otherwise correct, but is insufficiently stamped by reason of a mistake as to the amount of the proper

stamp, it shall be as valid as if it had been properly stamped, provided that, if the proper stamp is not put on within a reasonable time after the mistake is discovered, the appeal is to be rejected. That, I think, will meet the justice of the case without imposing any risk of loss to the revenue, which of course it is part of our duty to preserve."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 25th March, 1892.

S. HARVEY JAMES,
Secretary to the Government of India,
Legislative Department.

CALCUTTA;
The 22nd March, 1892.

Government of India Central Printing Office.—No. 544 L. D.—18-3-92.—308.—A. E. 605.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

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The Council met at Government House on Friday, the 25th March,

PRESENT

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble G. H. P. Evans.
The Hon'ble J. Woodburn, C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble Dr. Rashbehary Ghose.
The Hon'ble Sir John Edgar, K.C.I.E., C.S.I.
The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

MADRAS SMALL CAUSE COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented a further Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras. He said:—

"The Report in itself is sufficiently explicit on most of the questions which had to be considered by the Committee, but I desire, with Your Excellency's permission, to say a few words in further explanation of our reasons for recommending a republication of the Bill and also for the purpose of reassuring some who consider that the measure is aimed at the suppression or serious mutilation of the original side of all the High Courts, or at all events that it will in the course of time produce that result

"The Council will remember that one of the reasons which I assigned for postponing our final Report on the Bill was that the Committee had been equally divided upon one point, and that I was unable on behalf of the Government of Madras to accept the decision carried by my learned friend Sir Alexander Miller's casting vote, as I thought its practical effect would be to place the Governor in Council in a difficulty with regard to the selection of the best person

available to preside in the new Court. This difficulty has since been obviated for the time by the recent appointment of a second advocate to the Bench of the Small Cause Court, but I am not sure that it may not recur, nor am I certain that on its true construction section 7 of Act XV of 1882 does apply to the Judges of the new Court as the Bill is now framed. It may, however, be now left to the local authorities to consider whether it will not be better to distinctly prescribe as a qualification for a seat in the City Court some minimum term of professional practice or judicial experience.

"But even apart from that difficulty I cannot regret my decision to abstain from pressing for the immediate passing of the Bill on the present occasion. It is true that the Madras High Court is now so much in its favour that the Hon'ble the Judges have expressed a hope that it may be passed into law in time for the new Court to be inaugurated at the termination of their summer vacation, and it is also true that most of the sections, which were omitted by the draughtsman and have been added by the Select Committee, are more or less of a formal character, and such as must have been all along understood to have been intended. There are, however, one or two of a more novel description, and it is right that an enactment of a purely local character like this should be fully considered by the persons whom it will affect as nearly as possible in the form in which it is to become law.

"The provisions which I have chiefly in mind are those contained in section 8, which relates to a question about which there has always been a certain amount of doubt, *viz.*, whether the High Court's jurisdiction should be excluded. Some years ago it was decided by the then legal advisers of the Government of India that power was clearly vested in this Council to exclude the High Court's jurisdiction altogether, but that opinion has not been fully accepted by all authorities, and I think there can be no doubt that we ought not, if we can help it, to pass an Act based on a proposition which is at all open to question and the decision of which may entail on some unfortunate suitor a ruinous expenditure. After a good deal of discussion, therefore, we have unanimously decided to recommend that the concurrent jurisdiction of the High Court be expressly preserved, and, following the precedent of the Presidency Small Cause Courts Act, we rely on a penal provision as to costs to ensure the resort of suitors to the new Court to be established for them. The provision adopted has, I am assured, proved effective in the case of the Small Cause Courts, and, if that is so, there is no reason why it should not be equally effective as regards this new Court, which after all is only another Court for the determination of what are

really small cases though not within the technical definition of the term 'small causes.'

"Now, my last remark naturally leads me on to the other point on which I proposed to offer some remarks, and that is that the present measure is in no way calculated to impair the authority or independence of the original side even of the Madras High Court. It will simply provide an inferior tribunal for the determination of those petty suits which at present are either excluded by the expensive and dilatory character of the High Court's unsuitable procedure, or block the files and occupy the time of the Judges to the prejudice of more important litigation. Two letters from the European and Anglo-Indian Defence Association on the subject of this Bill have been laid before the Committee, and their main objection seems to be that the measure will practically substitute a District Court for the original side of the High Court, the maintenance of which they consider a matter of supreme importance. In the latter remark I am entirely at one with them, and I am confident that the whole of this Council will be so too. Whether we have regard to the efficiency of the Judges themselves, to the training and maintenance of a good Bar, the impartial administration of justice for the protection of the people at large, or to any other of the objects which a good executive Government must always keep in view, I am very decidedly of opinion that the substantial maintenance of the original side of the High Courts is, as the Association declare, a matter of supreme importance. It is for that very reason that I am and always have been entirely opposed to the establishment of District Courts for the presidency-towns. For all really important work the original side ought to be, and generally is, far more efficient than any District Court, while for the more petty litigation a District Judge is no more required than a High Court Judge. But I am not proposing to establish a District Court, or anything at all likely to lead to a District Court. That indeed is what we might come to if we adopted the suggestion made by the Madras Chamber of Commerce that the new Judge should be paid R2,000 to R2,500 a month, which is just about the salary of a District Judge. But the effect of this Bill will be merely to relegate small cases, which are not technically small causes, to just such another tribunal as the Court of Small Causes, with Judges of the same calibre and emoluments. If this too is objected to, it can only be on the principle of opposing the insertion of the small end of the wedge, which in itself is the worst of all arguments, paralyzing all efforts at reform, but has no application here because the small end of the wedge has been introduced already. With the full consent of every one concerned the cognizance of small causes has already been

entrusted to an inferior tribunal, and what we now propose is to deal with small cases which are not technically small causes on as nearly as possible the same lines, but preserving the right of appeal to the High Court. The Bill before us is only to apply to Madras, and, as has been well pointed out by the learned Judges of the High Court, the limit proposed for the pecuniary jurisdiction of the new Court is identical with that of the lowest grade of mufassal justiciaries in that presidency. In Madras every District Munsif has jurisdiction up to R2,500, and in the Report which I have just presented will be found a strong recommendation that no attempt should be made to go beyond that limit.

"Before I conclude I should like to recapitulate briefly the reasons which make this measure a desirable one for Madras, though it may not be, and so far as my own knowledge goes is not, in any way required for Calcutta.

"(1) The present system under which every case must come before the High Court entails a denial of justice in Madras, though I have no reason to suppose that it does in Calcutta. The existence of this evil has been universally admitted by every one with any special means of knowledge, including the public meeting of the inhabitants of Madras convened last September to oppose my proposals: when an issue has been admitted on the pleadings (so to speak) it does not require to be established by further proof. It has, indeed, been said that this denial of justice had nothing to do with my original proposals, but is an after-thought on my part. My answer is that it will be found referred to in my minutes written in Madras, and that it is prominently mentioned in the High Court's letter of 1885, which I quoted in full in my introductory speech. Now, who are the sufferers from this denial of justice? They are almost without exception natives, and the native community is entirely in favour of the Bill, notwithstanding the application of the scale of fees contained in the Court-fees Act.

"(2) The measure before us will hardly affect the Bar at all, for in Madras, as was also pointed out in the letter of 1885, every vakil of the High Court is entitled to appear, plead and act on the original side. As it is entirely optional with parties to engage counsel, it is probable that the few who do so now in the paltry cases under notice will continue to do so in the new City Court. On the other hand, the other branch of the profession, the attorneys, are likely to get more suits, as in the City Court they will be on equal terms with the vakils and no longer under the necessity of instructing counsel.

"(3) The area of the High Court's original jurisdiction in Madras is excessive in extent, and a great part of it hardly distinguishable from the adjacent

mufassal. Upon this point I am content to read extracts from a standard authority. 'The town of Madras with its suburbs,' says Hunter's Gazetteer, 'extends nine miles along the coast and runs 3½ miles inland, covering an area of 27 square miles.' 'Black Town,' which is the business part of the city, is described as 'an ill-built, densely populated block, about a mile square, with more or less crowded suburbs, stretching three miles north of the Cooum river,' and, after referring to various other areas which go to make up the limits of the original jurisdiction as well as of the Municipality, the writer proceeds as follows:—

'The City of Madras is thus spread over a large area; and it is only after some stay that one realizes the stately semi-suburban life which distinguishes it from the more concentrated social activity of Calcutta. In short, a very large proportion of the tract of country comprised within the municipal limits of the City of Madras—covering as it does an area of 27 square miles, with 14 villages—consists of a poor rural district, more or less under cultivation, which surrounds the fort and the native town and suburban villages. This suburban and semi-rural characteristic explains the recurring difficulties of municipal administration . . . . The moderate resources furnished by a poor and partly rural population have to be scattered over an area many-fold larger than that included under the management of the wealthy corporations of Calcutta and Bombay, with the inevitable result of apparent shortcoming in many details.

"And the same characteristic also explains many of the differences between Madras and Calcutta litigation. Thus I hold in my hand a comparative statement, classing according to value the suits instituted in the several Presidency Small Cause Courts during 1891. The aggregate number is pretty nearly the same for all the Courts, but Madras shows more than 10,000 or 41 per cent. for *sums not exceeding ten rupees* against less than 6,000 or 22 per cent. in Calcutta, and 2,000 or less than 7 per cent. in Bombay. As regards suits between R10 and R500 in value, Madras falls considerably below her sisters. Between R500 and R1,000 the Madras suits are only 40 per cent. of those in Calcutta and 30 per cent. of those in Bombay. Between R1,000 and R2,000 the suits in Calcutta and Bombay are four times as numerous as those in Madras.

"I may, perhaps, take this opportunity—although it has nothing to do with the present subject—to congratulate the people of Calcutta on the improvement which this statement exhibits in the working of their Small Cause Court. On the 31st December last there were only 1 750 suits pending, or something under 7 per cent. of the number instituted during the year, against 2,106 in Madras and 3,186 in Bombay, while the average duration of the cases had been reduced to 62 and 19 days, according as they were contested or uncontested, against 55 and 31 days in Madras and 61 and 40 days in Bombay. Thus, the state of the

files here compares now very favourably with those of the other presidency-towns.

"But to return from this digression. I venture to say that both the physical characteristics and the nature of the litigation at Madras entirely bear out what I said in my introductory speech, *viz.*, that there is no conceivable reason why a petty dispute arising in one of the suburban hamlets should occupy the attention of a High Court Judge on R3,750 with all his paraphernalia, when a similar dispute outside the toll-bar would be adequately dealt with by a District Munsif. The Judge of the new Court, I need hardly say, will be very far above the grade of District Munsif.

"(4) Lastly, so far as the measure is one of economy either of money or an expensive agency, the Madras Government is under an obligation not to press for an additional Judge of the High Court unless he is required for other work exclusive of the petty original suits not exceeding R2,500 in value. In connection with this point I have heard it stated somewhat inconsiderately that the people pay for the best judicial tribunals and ought to have them; but this is certainly not the case as regards the original side of the Madras High Court. The fees levied are very far below the cost of the Court, and as a matter of fact the mufassal litigants pay not only for the appellate side, which is fair enough, but also for the original side, in which they have little or no concern. The Government of India recognises its obligation to supply as many Judges as are really required, but we do not feel called upon to support a demand for an additional Judge of the highest rank when a very much cheaper Judge is preferred by those immediately concerned and the extra expense falls on others. It has been said that a pecuniary limit is after all an unsatisfactory gauge of the difficulties of a suit; but it is the test which has been everywhere adopted, and no better can be suggested. In cases where this test may fail, owing to the importance of the suit being out of all proportion to its nominal value, the maintenance of the High Court's concurrent jurisdiction, as now recommended, will prevent the test working any practical injustice. It would be impossible to delegate to mere ministerial officers the decision of issues which, though involving trifling sums, may be vitally important to those concerned. Moreover, an efficient ministerial officer of the status contemplated would probably cost more than such a Judge as is required.

"For all these reasons the Government of India consider that the establishment of a new Court of inferior jurisdiction in the Madras Presidency-town cannot be avoided. Even the mercantile and trade associations have twice

admitted the expediency of some such measure. It has now been worked out in full detail, and I trust that, acquiescing in the principle for a third time, all classes will direct their attention to the question how the new Court can be made as efficient as possible."

The Hon'ble P. CHENTSAL RAO said :—

"The hon'ble mover of the Bill has so fully and clearly set forth the reasons which render the establishment of a City Court desirable and necessary, that it is needless for me to take up your Lordship's time with any lengthy remarks. But, knowing as I do the general condition of the natives of Madras and their feelings, I desire to assure the Council that the native public, whose requirements the Bill is chiefly calculated to satisfy, will be anxiously looking forward to the early passing of the Bill, and will heartily welcome it as a real boon conferred on them. Notwithstanding that the institution-fee in the High Court is comparatively smaller in many cases than that in the Mufassal Courts governed by the Court-fees Act, the other expenses of litigation in the High Court in petty suits are so heavy that not only are the doors of justice practically shut against the poor, but those that enter them are seldom able to come out without having to repent that they ever sought such costly justice. The natives of Madras, chiefly those that live in the suburbs, do not in the least differ in their occupations and condition of life from those in the neighbouring district of Chingleput, and I can hardly conceive of any adequate reason for compelling such men to resort to the highest Court in the land for the adjudication of petty suits such as are disposed of in the districts by District Munsifs drawing R200 to R400. I need not, however, discuss the matter further, as all the authorities consulted and the people generally are unanimous in thinking that the establishment of the City Court is urgently called for in the interests of the people.

"As regards the applicability of section 7 of the Presidency Small Cause Courts Act to the Judges appointed to the City Court, I consider it to be a matter of minor importance from the people's point of view, though, on a careful consideration of all the bearings of the subject, I for one am of opinion that the restriction imposed on the discretion of Local Governments by section 7 will not affect the appointments made under the Bill before the Council. Nor do I consider it necessary to fetter the discretion of the Local Government when they have so many qualified and able advocates, High Court vakils and members of the judicial service to choose from."

His Honour THE LIEUTENANT-GOVERNOR said :—

"I have nothing to say with regard to the special subject of the Small Cause Court of Madras, but I desire to express my gratification at the observations which have fallen from my hon'ble friend Sir Philip Hutchins with regard to the improvement which has taken place in the working of the Calcutta Small Cause Court during the past year. The statistics referred to by my hon'ble friend have already come before me, and I also have noticed with great pleasure the better results which have been attained, and I am sure it will be a gratification to the Chief Judge of the Small Cause Court, to whose exertions I believe the improvement is chiefly due, to know that the Home Minister in charge of the Department of Public Justice has also noticed these things in your Excellency's Council and has taken the opportunity of expressing the approval of the Government of India of the improvement which has taken place.

"I may take this opportunity of mentioning that some other suggestions for the reform of these Courts were sent up by the Bengal Government to the Government of India in the course of last year to which no answer has yet been received, and I trust that, if a favourable reply is given, we shall achieve still greater improvement in the successful prosecution of justice in this Court."

COURT OF WARDS ACT, 1879 (B.C.), AMENDMENT BILL.

The Hon'ble SIR JOHN EDGAR moved that the Report of the Select Committee on the Bill to amend the Court of Wards Act, 1879 (B.C.), be taken into consideration. He said :—

"The reasons for the alterations made by the Committee have been stated in our Report, and I do not think it is necessary for me to take up the time of the Council in recapitulating them. There is, however, one point upon which it may be desirable that I should make some remarks. In the original Bill brought into the Bengal Council as amended by the Select Committee of that Council, there was provision that no decree obtained upon a personal obligation of a ward should be executed against his property in the possession of the Court The High Court, in a letter addressed to the Government of India in April, 1891, took exception to this provision as interfering with the rights of creditors. The Government of India considered that the precise wording of the draft section seemed possibly to lay it open to the High Court's objection, and, in a letter addressed to the Government of Bengal in September last, it was pointed out that the sole object of the proposed legislation was to protect

the family estates, and the Government of Bengal was asked that the draft should be so modified as to make it clear that only contracts made during wardship should be affected In consequence of this, the Government of Bengal in October last submitted to the Government of India a fresh section following closely the provisions of the Act in force in the Central Provinces. The Government of India considered that this new section was faulty, inasmuch as that under a strict construction of it the ward would be unable during wardship to take a house or to incur any obligation for the purchase of the necessaries of life, and to meet this objection the section contained in the Bill which was published in the Gazette of India of the 20th ultimo was drafted. The Government of Bengal considered that the new section was inadequate and unsuited for the purpose for which it was intended, and this opinion was shared by some members of the Select Committee including myself Finally, after much discussion and very careful consideration, we adopted the alterations contained in sections 12 and 13 of the Bill as amended. These sections are considered satisfactory by the Government of Bengal as well as by the Government of India, but my hon'ble friend Mr. P. Chentsal Rao has given notice of an amendment which, I think, is in a great measure open to the objection taken by the Government of India to the section drafted by the Government of Bengal in October last I have ventured to trouble the Council with these details in order to indicate that the sections, as at present drafted, are the outcome of discussions which have been going on for more than a year, and that they have taken their present form in order to meet objections raised in part by the High Court, in part by the Government of India, and in part by the Government of Bengal. I would, therefore, ask my hon'ble friend not to press the amendment which stands in his name.

"Since the Select Committee's Report was laid before the Council by me the Government of India has received from the High Court a letter on the subject of the Bill as amended by the Select Committee. Copies of this letter have been for some days in the hands of the members of the Council, and the principal questions raised in it, especially that immediately connected with the certificate procedure, will be noticed to-day by members able to speak with more authority than I can. It will be enough for me, therefore, to point out to the Council that the Hon'ble Judges have apparently misunderstood the scope of the proposed alteration in section 3 of the Act by which 'estate' is defined as 'including the share of an estate.' This misconception appears clearly in the remarks made in the concluding portion of paragraph 4 of the Hon'ble Judges' letter regarding the future effect of section 37 of the Bengal Court of Wards Act of

1879, from which it would seem that the Hon'ble Judges are not aware that shares of estates are at present managed by the Court of Wards and its officers, who have for years had an absolute right in the accounts and papers relating to the entire estates, and have exercised with regard to the disclosure of titles the power which the Court considers to be of a most formidable and irregular nature. I have now before me a statement received from the Board of Revenue, from which it appears that the majority of 69 proprietors, who are at present under the Court of Wards, hold shares in revenue-paying estates, in revenue-free estates, in patni holdings and in tenures of various kinds; while some of the most important and extensive properties managed by the Court of Wards are almost wholly composed of such shares. In many of these estates the powers under section 37 have been and are being exercised, and the fact that the Hon'ble Judges are unaware of this shows pretty clearly that the evils anticipated in their letter cannot be so serious as they suppose. If the application of section 37 to estates, shares of which are now managed by the Court of Wards had given rise to injustice and hardship, surely the High Court would have heard of it. The fact is, as I have explained to the Council when introducing the Bill, that we are not initiating any new principle or making any new departure. We are simply removing an accidental anomaly of an inconvenient character. In illustration of what I mean I may adduce the property of the Srinagar minors, managed by the Court of Wards, which is made up of 15 entire revenue-paying estates paying revenue to Government of over Rs. 10,000, and shares in 49 estates the revenue payable on account of which shares is upwards of a lakh. Again, the property of the Sankerpur wards in Dinajpur is made up of two entire revenue-paying estates paying Rs. 369 to Government, and of shares in five estates the revenue payable on which shares is Rs. 30,940. In one of these properties it will be seen that the revenue payable on the shares is ten times that payable on the entire estates; in the other, the revenue payable on the shares is 100 times that of the entire estates. As the law at present stands, the bulk of the properties are only managed by the Court of Wards owing to the accident of the minors possessing comparatively insignificant entire estates, and I have heard of cases in which the anomaly is even more grotesque.

"As regards the objection raised by the Hon'ble Judges to the Court of Wards undertaking the management of the property of persons holding undivided shares in joint Mitakshara estates, I can assure the Council that the Government of Bengal never contemplated allowing the Court of Wards to do anything of the kind, and I can scarcely imagine any Court of Wards attempting to do anything so mischievous and preposterous as interfering of their own

motion in the affairs of an undivided Mitakshara family. However, I am quite willing to accept either of the alternative amendments which stand in the name of my hon'ble friend Mr. Evans, and should prefer the first as making perfectly clear that no undivided share held in coparcenary by a member of a joint Hindu Mitakshara family could be taken over by the Court of Wards."

The Hon'ble MR. EVANS said that the object of the Bill was a two-fold one: the first one was to bring in a new class of disqualified proprietors as to whom the Government might be of opinion that in the interests of the public their estates should be managed by the Court of Wards. The other object was to enable them to take over shares of estates without requiring that there should be one undivided estate among them. As regarded the first part of the Bill several objections had been taken, the main objection being that it would lead to an extension of the certificate procedure. He could not help feeling that this was a strong objection. In the present state of things the Court of Wards had to take over an estate of a zamindar, whose papers were untrustworthy, and whose raiyats had been able to hold their own. The raiyats had no very strong reputation for veracity where their rents were concerned, and, on the other hand, the zamindar's papers were frequently untrustworthy, and the raiyat's chance of success depended in nine cases out of ten on his being defendant or the zamindar having to prove his case. In many cases there were disputes of old standing as to the length of the pole to be used in measuring the land, and the rate per bigha, and whether the rent was so much per bigha or a consolidated rent for the holding. Disputes constantly existed as to all these and many other points. When the certificate procedure was employed the whole onus of proof was shifted on to the raiyats. This onus they were unable to discharge, and the result was that in many cases the raiyats were completely crushed for the benefit of the minor or other disqualified zamindar. This was an unjust state of things, which was pointed out at the time of the Bengal Tenancy Act. The question was then raised whether it was possible to do away with this certificate procedure in the case of wards' estates, and it was hoped that at least some change would be made in it. There was a good deal said in favour of a summary procedure for the recovery of rents, where disputed questions had all been settled, the rent fixed, and where no dispute remained, except whether the raiyat had paid his rent or not. But there was no defence possible for the use of such a procedure in disputed cases. So great was the force of this objection that it appeared to him and to many members of the Select Committee that they were bound to put into the Bill a proviso to the effect that the certificate procedure should not apply to the new class of estates unless some other means could be found to attain the same

object. He was informed that it was the intention of the Government of Bengal to take immediate steps to issue an executive order to put a stop to the use of the procedure in disputed cases pending legislation. Of course, an order could only be a stopgap, but His Honour the Lieutenant-Governor is said not to be in the habit of allowing his orders to be disobeyed, and this would be some substantial guarantee that the mischief would not be allowed to continue. On this understanding, without which he could not consent to the Bill being passed previous to legislation in this direction, he was content that the new estates should be subject to the certificate procedure in the same way as old estates. It was a choice between exempting the new class of estates from this hardship while allowing the old class of estates to suffer from it until the law was changed, or securing to both an *interim* protection pending legislation. It might be said he had exaggerated the evils of the certificate procedure; but it was not so. He knew there were supposed safeguards under the certificate procedure. The managers under the Court of Wards had to send in a notice duly verified that rents were due from certain raiyats. On this the Collector, if he thought fit, issued a certificate. Then the raiyat had a right to make an objection before the Collector. If he could establish the objection, the certificate was set aside. If he failed, he might institute a regular suit in a Civil Court to set aside the certificate. But the fact remained that from first to last the onus lay on the unfortunate raiyat of proving his case, and in ninety-nine cases out of a hundred the burden was too great for him, even when he had a good defence on the merits. MR. EVANS had no wish to say anything against the Court of Wards' officers. He did not think they acted with intentional harshness or injustice. But the instincts of the Court of Wards were proprietary, and their duty was to manage the estate for the ward. The Collector did not like to see heavy arrears—the manager had to show good results if he could. The result, however, arrived at was injustice to the raiyat, and he thought it was clear the injustice must be put a stop to.

There was another special objection raised by the High Court as to the shares of estates belonging to members of Hindu joint families. This was a valid objection, and he had sought to meet it by the amendment standing in his name which he understood would be accepted by Government. His hon'ble friend Sir John Edgar had said it was never intended that the Court of Wards should do anything so preposterous as to take over such shares. It was therefore clearly not advisable to pass a law which would give them the power of doing so. Another objection was to the further intrusion of executive powers into private affairs. They lived in a very peculiar country—in a

country in which a great many Western ideas and Western principles had been brought into operation where they did not work harmoniously. There was a rapid process of disintegration going on, and the land had a tendency to pass into the hands of other classes than its old proprietors. It was considered by the Government that it was a desirable thing to preserve a certain number of large estates and old families, and that it was a matter of policy to do so. In a country like this the influence of large proprietors and large estates was very great They were generally on the side of law and order, and there was no doubt that they had almost invariably been a help to the Government. This was not a large measure, as he did not think many estates would come under it, because very few proprietors would be willing to be disqualified, and lose all power over their estates and become stipendiaries of the Court of Wards for an indefinite time. Even when a proprietor had made up his mind to take this step, he had to go to the Local Government, who had to consider whether in the public interest the estate should be taken up. It had been said that the words "public interest" was a vague thing; but that could not be helped, and the Government would have to judge of it. On the whole he thought that this power should exist in special cases, having regard to the present state of things among the landholders of Bengal.

One more matter he desired to mention, and that was that in the Bill as it originally stood there was a provision enabling the Court of Wards to act as executors to an estate. This was a feature which, he thought, was exceedingly objectionable. This would have the effect of extending the operations of the Court of Wards Act in directions where it was not desirable to extend it. There would be a strong desire on the part of dying zamindars to place the property in the hands of the executive power instead of appointing private persons executors. There was no sufficient reason for this, and he did not think it desirable so to extend the operations of the Court of Wards.

The Hon'ble SIR PHILIP HUTCHINS said:—

"As to the question whether the Report on this Bill should now be taken into consideration, I see no reason for opposing Sir John Edgar's motion. The Government of India have given the High Court's letter the most careful attention, as they do invariably whenever the Hon'ble Judges favour them with any representation; but the Bill is not really being proceeded with in a hurry; it is, as Their Lordships themselves admit, 'substantially the same measure as that introduced into the Bengal Council last year,' and the main points suggested were fully considered last summer.

"The Hon'ble Court's objections seem to fall under three heads. The first relates to the expansion of the definition of an estate so as to include a share in an estate. By 'estate' we mean simply a revenue-unit. We had no intention of treating a Hindu coparcener's undivided share as a separate revenue-unit, and I think this objection will be fully met by the amendment proposed by the Hon'ble Mr. Evans.

"The next objection has reference to the certificate system. From the first the Government of India have shared and supported the view of the High Court that certificates ought not to be issued in respect of any demand which is doubtful or the subject of a *bonâ fide* dispute. Their Lordships have quoted a portion of the third paragraph of our letter as leading them to believe that the amendment of the law relating to certificates would be undertaken before this Bill was proceeded with; but, if the whole paragraph is taken together, I submit that it hardly conveys any such assurance. The whole paragraph stands as follows:—

'There is considerable force in the objections taken to the extension of the certificate procedure. It may, however, be observed that, if the general law as to the power of the Collector to make certificates regarding arrears of rent in wards' estates is amended, the amendment will of course extend to the estates now in question; and the Governor General in Council hopes that the question will be settled before this Bill becomes law.'

"Here the High Court's quotation stops, but we went on to say that 'meanwhile'—that is to say, until the law can be amended—

'Meanwhile, His Honour the Lieutenant-Governor will be asked to consider whether it may not be possible to restrict by executive order the making of certificates, or, if that is not possible, whether a clause should not be added to the Bill providing that that procedure shall not extend to the estates contemplated by the Bill.'

"I believe His Honour is now prepared to give an undertaking which will satisfy the Council that the certificate system will not be abused and that every effort will be made to put it on a better legal basis as soon as possible.

"The third and last objection is one of which the Government of India cannot admit the force, and which indeed is contrary to their recognized policy. It is asserted that the State has no concern with the affairs of any of its private subjects, and that its interference for the purpose of saving private estates is 'a retrogade step, substituting, as it does, for the ordinary law applied in Courts of Justice what is really a special intervention of the executive at its own discretion.' Their Lordships have not explained how the ordinary law as applied by

the Courts can operate to protect an encumbered estate from ruin, and, if their view is to be accepted and State intervention excluded, all our enquiries into the intricate subject of agricultural indebtedness are merely causing vain trouble and expense. But the Government of India take a much wider view of their duties. Whether we have regard to the raiyats of the Dekkhan, the peasant-proprietors of the Punjab, or the great zamindars of the Lower Provinces, it appears to us that the manner in which their estates are passing into the hands of money-lenders and other non-agriculturists involves a grave political danger; and that we are not only justified in taking, but under an obligation to take, such reasonable measures as may appear necessary to secure ancient proprietary families from being ruined by the folly or misfortunes of a single representative. The law of most Provinces already empowers the Local Government, with the proprietor's consent, to place an embarrassed estate under the Court of Wards with a view to rescue it from the clutches of speculative money-lenders. As long ago as 1873 a law to this effect was enacted for the North-Western Provinces, and the Government of India are assured that it has worked admirably. It is time now that it should be extended to Bengal, as it will be if this Bill becomes law; but in this Bill we have introduced a safeguard against unnecessary interference, which does not exist in other Provinces, by providing that no proprietor shall be declared disqualified, even on his own application, unless the Lieutenant-Governor is satisfied that the public interests require him to intervene. No doubt that is a somewhat vague expression, but the very nature of the subject makes it imperative to give the Head of the Local Government a large discretion."

The Hon'ble SIR ALEXANDER MILLER said:—

"I have so little to add to what has been already said, that I do not think I ought to detain the Council long; but, considering the character of the criticisms of the High Court and the assurance which was given to them, and which no doubt has been fully carried out, that every member of this Council would consider and carefully weigh their representations, I do not think I ought to let this Bill pass without a few observations in reference to their letter.

"There are only two or three points in regard to which I think it necessary to say anything. First, as regards the certificate procedure. Now, I confess I personally thoroughly agree with the view of the High Court, and I think this is also the view of the Government of India, that the certificate procedure, although suitable for the recovery of Government revenue, which is a fixed and definite claim, and as to the amount of which there can be no question, the only point arising being as to whether it has been actually paid

or not, is very unfit for being used as a lever for determining cases between landlord and tenant—cases which in every country are frequently of a very complicated nature, and which in this country are, as far as I can understand, not only more complicated but more difficult of determination than in ordinary countries, because the tenants seem to be even more improvident than those with whom I have been accustomed to deal, though I should have thought that their improvidence could not have been exceeded had I not heard the account which my hon'ble friend Mr. Evans has given us of the tenantry of Bengal.

"I should certainly, if the Government of India were not pledged to take up at the earliest possible convenient moment the whole question of the applicability of the certificate procedure to questions between landlord and tenant, have thought it necessary to move for some clauses which would have excluded that procedure from the new cases about to be brought under the Court of Wards; but, as I understand, the Government are not only to look into the question at the earliest possible moment, but to legislate so as to put this matter on a fair and satisfactory footing, and I do not think that the extension for a short time of this procedure to the few extra estates which may be brought under the Court in the interval is of sufficient importance to delay the passing of an Act which, on the whole, I think a very desirable and beneficial one.

"The next point taken up by the High Court is the general objection to taking out of the hands of a man not disqualified by law the conduct of his own property. I can only say that the objection is one which has not, as far as I know, prevailed in any civilized country where the matter has been brought forward. The Scotch law is extremely analogous to that which we are now proposing to introduce. It is a little more against the landowner, because here we propose that the consent of the disqualified man should be required, whereas by the Scotch law of *prodigus* a man, otherwise *sui juris*, may under certain circumstances be deprived against his will of the right of managing his property.

"The laws both in France and Germany have always recognised the right of the State to prevent a man from dissipating his property, and the power of a Conseil de famille was until the introduction of the Code Napoleon very much greater in that respect than anything now proposed, and within the last few years the lunacy law in England has been so far modified as to enable the Master in Lunacy to declare a man unfit to manage his property without declaring him a lunatic or taking charge of his person. Under these circumstances, I cannot see that there can be any objection in principle to our extending the

protection of the Court of Wards to those persons who are practically in the position of the class which I have last named—that is to say, persons who are in the public interest not to be trusted to deal with their own property, although they cannot be said to be lunatics or unable to take care of themselves.

"The last objection taken by the High Court was to the clause which proposed to invalidate the contracts of persons whose property is under the charge of the Court. The clause is only of importance when you come to deal with persons who are in the new class, because, except perhaps a few unmarried women, all the other persons affected are already incapable of entering into valid contracts; but the new class consists of persons who are *sui juris* in the eye of the law, and are not disqualified except under the particular provisions of this Act. The terms of the clause have been the subject of much discussion partly by the High Court, partly by the Government of Bengal, partly by the Government of India, now for several months, and after having assumed various forms they were settled, not exactly unanimously, but nearly unanimously, by the Select Committee in the form which appears in the Bill. They are not exactly in the form which personally I should like, but I am willing to stand by the form which they have assumed. I should object most strongly to any such alteration as that which is proposed by my hon'ble friend Mr. Chentsal Rao which would go to the extent of depriving these persons of any real power of contracting at all. I know what his proposition is—that, so far as the question of necessaries is concerned, they would be in the same position as a minor; but this is a question of contract, whereas the law as to necessaries rests on a totally different footing, quite independent of contract; and I doubt very much whether a man who is not a minor—a man who is *sui juris*, and to whom goods had been delivered at his request—would be subject to an action for necessaries. If he is to be unable to enter into any contract which might involve pecuniary liability, the result would be that no one who supplies him would be able to recover the money unless the man himself chose afterwards voluntarily to pay it. That would have two results: first of all, a number of people who might think it very desirable to put their estates under the Court of Wards would very probably hesitate to do so if they found themselves reduced to absolute incapacity in the eye of the law; and, secondly, if it was once known that a man was a ward of this class, no man in his senses would trust him with a loaf of bread or a bottle of wine unless he paid the money down for it. I do not think it desirable that these persons should be placed in this position. The clause as now framed does two things. It provides, in the first place, that no such ward shall be competent to create any charge—that is to say, to mortgage or pledge his estate

without the consent of the Court; and, secondly, that, if he has entered into any contract involving him in pecuniary liability, the consent of the Court shall be required before execution can be taken out against his estate in fulfilment of that contract.

"That would enable the creditor to recover from the man himself if he had anything to pay with. He would be able to get payment by threatening execution if he was not paid voluntarily, and I see no reason whatever why this course should not be open to the creditors. I think that it is entirely for the interests of the country that old estates should not be dissipated, and that as far as possible the agricultural population should be retained in possession of the land; but it is not for the public interest that men should be encouraged to defraud their creditors, and I therefore hope that this Council will not consent to any alteration of the last two clauses as settled by the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—

"What has been said by my hon'ble friends Mr. Evans and Sir Philip Hutchins on two of the main subjects under discussion,—the applicability of the Court of Wards' action to an undivided share in an estate, and on the general principle of enabling a proprietor to declare himself disqualified to manage his estate and to put himself under the protection of the Court,—has been so complete in itself and so entirely agrees with my views that it is not necessary for me to add anything on that subject. I turn, therefore, at once with pleasure to the third main subject of the day—the applicability of the certificate procedure to wards' estates—and will answer the challenge made by my hon'ble friend Mr. Evans in this respect when he practically asked if the Bengal Government would pledge itself that executive orders should issue preventing the use of the Certificate Act in certain classes of cases, and that the earliest possible opportunity should be taken of amending the Certificate Act in the same direction. I answer that challenge with pleasure, and I undertake that what he and the High Court desire, and what he has so justly stated, shall be done. I fully agree with what has been said by my hon'ble friend Mr. Evans that, when the Court of Wards first takes over the estate of a deceased proprietor, it generally finds that estate in a condition of great confusion; the accounts and the rent-rolls in an extremely inaccurate and untrustworthy state; and it is a hard thing for the raiyat that the manager of an estate under the Court of Wards should have legal power given him to act upon these inaccurate and untrustworthy *jamabandis* and other documents as if they were thoroughly reliable, and should issue a process against the raiyat for the rent which these papers show to be due, and leave the onus of proving that the rent is not due on the raiyat. But,

while admitting that this is not the right position in which to place the raiyat, I do not believe the law has often or usually been worked so as to cause real injustice. I am very glad that my hon'ble friend Mr. Evans in stating the case protected himself from making, and the officers of this Government from having made, against them a charge which might possibly have been based on what has been written on this subject. My hon'ble friend Mr. Evans has very justly said that, although the legal position of the raiyat is a very unfair one, he had no doubt that the managers of the estates, and the Rent Courts before which the requisitions of the managers would come, would do their best to do justice, but he thought that they would be to a certain extent not honest in their desire to show a clean rent-sheet, and that they would be anxious to prove themselves too good executive officers in the matter of collecting rents. He has, I think, quite accurately stated the fact that the Rent Courts before which these requisitions come would, as a rule, be quite as careful to ensure that a decree was not made against the raiyat on insufficient grounds as a Civil Court would. I think he has to some slight degree exaggerated the idea of how the desire to show a clean rent-sheet might operate in the minds of the managers of estates. If my hon'ble friend had had the duty imposed upon him, as I have had, of studying the Board of Revenue's Annual Report on the Court of Wards' Estates, and he had seen the extremely large amount of arrears and the inefficiency of the managers in the matter of collection, I think he would have been less disposed to come to the conclusion that these officers were actuated merely by the desire to show their executive efficiency. As a matter of fact, the Annual Report shows that in a great many of the wards' estates the arrears are very large and the collections very slow and behindhand, and I shall take note of what fell from my hon'ble friend Mr. Evans, and shall have great pleasure in issuing the next resolution on the next report to bear in mind the suggestion he has made, that possibly one cause of the inefficiency of these managers may be their anxiety not to do injustice in the case of those arrears which exist.

"Passing on from that point, I desire to state in as clear language as possible what I intend to do to carry out the pledge now given. I fully agree that a summary process is not a suitable process in a case where any dispute exists as to whether the amount is due or not, and the order which I propose to issue is that, as soon as an estate comes before the Court, the first duty of the Court will be to comply with the provisions of section 101 and the following sections of the Act, to make a settlement of the estate, to have a field measurement made and a complete record-of-rights. Until that record-of-rights is made, and every dispute between landlord and raiyat is decided and a clear sheet exists

showing exactly what each man holds, what his tenure is, and what rent is due from him, till then I think any form of summary procedure is not justifiable. Under orders which will emanate from this Government no such process will issue from the time when such order is made public, and I will take the earliest possible steps to amend the particular law in this direction.

"I think, therefore, that my hon'ble friend Mr. Evans is well advised in not pushing his objection to the certificate procedure to the extent of trying to bar the passing of this Bill or inserting provisions restricting the application of the Certificate Act. He has rightly said that if he had done that he would only have saved some very few estates from the operation of this clause, and nothing could have been done to interfere with the operation of the Act in regard to all the other estates. After the pledge which I have given has been carried out, the procedure will apply to the whole of the estates under the Court of Wards.

"But a further vista opens out to us in connection with this matter, and it is one of considerable importance, and I am glad to have this opportunity of explaining it. I came to this Council having no doubt about it, but some slight doubt has been occasioned to me by the remarks of my hon'ble friend Sir Alexander Miller, who has expressed an opinion that a summary procedure might be suitable for the recovery of the Government demand of revenue, but would in no case be suitable in the adjustment of disputes between landlord and tenant. I trust that when my hon'ble friend Sir Alexander Miller has had an opportunity of seeing the care and accuracy with which the record-of-rights under the Tenancy Act is made, how clearly every circumstance of the tenure is defined, what care is taken to make a complete and accurate settlement, to define the amount of rent due, and as to every possible incident connected with the tenure, I think, when the hon'ble the Legal Member has satisfied himself on these subjects, he will probably agree that it is quite as just that there should be a summary procedure for the recovery of rent as to have a summary procedure for the recovery of revenue from estates borne on the Government rent-roll. The Council are aware that we are engaged now not merely in a cadastral survey of those estates, as to which I have pledged myself, but in an operation which has given rise to great agitation and anxiety on the part of many of our important landholders and many of the most loyal subjects of the Government, and I think it will be some satisfaction to them and tend to remove their anxiety if they have reason to hope that as soon as this record-of-rights, which will be formed under the Bengal Tenancy Act with a more summary procedure for the recovery of rent than now exists, shall be bestowed upon them, they will practically obtain the same benefits in regard to the recovery of rents from their raiyats as the

Government officers have with regard to the recovery of rents in estates which belong to Government or in estates which are managed by the Court of Wards. There is a provision now in the Tenancy Act under which rent-suits below Rs. 50 may be tried summarily like a Small Cause Court suit, but this provision had not been put into force hitherto because rent-suits generally have turned not merely on the question whether the rent had been paid or not, but on the question how much the rent really is, or whether rent is due at all. When once disputes of this sort have been cleared away, it seems probable that the provision referred to may be utilised, or even that some simpler procedure may be invented. I propose that this subject should be taken in hand by the Bengal Government at the earliest opportunity; and, if I get the sanction of this Council, I trust I may be able to introduce a Bill of this kind which will extend its benefits, which, I think, are perfectly reasonable, to the great and small landholders in the districts in which the cadastral survey is carried out. In that way we shall do a great deal to remove the suspense and anxiety which has arisen between landlords and tenants with regard to the trouble and expenditure which the survey will bring upon them, and also to allay the opposition to the cadastral survey, which will, I believe, be of the greatest benefit to the country."

The Motion was put and agreed to.

The Hon'ble MR. EVANS moved the following amendment, namely:—

That after the words "and includes a share in or of an estate" proposed to be added to section 3 of the Act by section 2 of the Bill as amended, the words "other than an undivided share held in coparcenary as the property of a Hindu joint family governed by the *Mitakshara* or *Mithila* law" be inserted.

The Motion was put and agreed to.

The Hon'ble P. CHENTSAL RAO moved that for section 13 of the Bill, as amended, the following section be substituted, namely:—

Substitution of new section for section 60.

"13. For section 60 the following section shall be substituted, namely:—

Disability of ward to contract, etc.

'60. No ward shall be competent, without the leave of the Court, to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability.'"

He said:—

"The principle of the Bill in so far as it is designed to preserve ancient families from ruin, and to prevent their estates from being broken up, has my

hearty sympathy; and I only regret that the Bill is limited in its operation to Bengal. In Madras there are some very ancient zamindaris which are heavily involved in debt, and are on the brink of destruction. They richly deserve the protection and benefit which the Bill is calculated to afford, and I hope it may be in my power to introduce, with Your Lordship's permission, a similar Bill for Madras some time next year after consulting the Madras Government and the chief zamindars of the Province.

"Coming to the details of the Bill under consideration, section 13 seems to me to be inadequate for the purposes for which it is intended. I presume that the object of the section is to prevent creditors from advancing loans to the wards without the leave of the Court, so that the wards may be weaned of their pernicious habits of constantly contracting debts, and that it may be possible for the Courts to restore the estates free from encumbrances, and so give them a fresh start. If so, I do not see how the section can effectually attain the object. The section does not declare contracts entered into by the wards without the permission of the Court void, but simply lays down that the estate shall not be, without the leave of the Court, answerable for debts incurred during the period of management, the personal liability of the debtor remaining unaltered. This provision may deter some prudent and honest creditors from advancing loans without the permission of the Court, but I can speak from experience that there are everywhere a considerable number of speculators who are ever ready to advance loans on mere personal security, provided a high rate of interest is promised. They freely calculate upon the weakness of human nature and reckon upon the debtors voluntarily selling or mortgaging their property, when they are in a position to do so, to liquidate the debts and avoid incarceration in jail. The effect of section 13 will thus be not to prevent the accumulation of debts during the period of management, but to create debts far more serious and insidious in their consequences than ordinary debts contracted in the absence of any prohibition; for loans under ordinary circumstances on the security of the estates bear a moderate rate of interest, whereas loans on mere personal security can only be had at ruinous rates. The only effective way of preventing accumulation of debts during the management and forcing habits of frugality on the proprietors is, not by enacting that the property shall not be answerable for such debts without the leave of the Court of Wards, but by declaring all contracts entered into without the leave of the Court absolutely void, so that creditors may under no circumstances be tempted to advance loans without the leave of the Court. It may be said that such a provision would be a violent intrusion

upon the natural rights of owners of private property, but the objection will vanish when it is remembered that the prohibition applies only to persons already legally incompetent to enter into contracts, or to persons who have with their eyes open consented to the properties being managed by the Court of Wards in consequence of their own inaptitude, and with the full knowledge that their rights will be abridged for their own benefit during the management. I may also remark that any declaration that the wards shall not be competent to enter into contracts cannot in the least affect ordinary engagements made by them for necessaries of life, for all such engagements fall within section 68 of the Contract Act, IX of 1872, which clearly says that, if a person incapable of entering into a contract under any law for the time being to which he is subject (*vide* section 11) is supplied by another person with necessaries suited to his condition in life, the latter person is entitled to be reimbursed from the property of such incapable person. This seems to me to be quite sufficient for all ordinary requirements, and in extraordinary cases there is nothing to prevent the wards obtaining the previous consent of the Court.

"For the foregoing reasons I beg to propose to substitute the following section for section 13 in the Bill :—

Substitution of new section for section 60.

"13. For section 60 the following section shall be substituted, namely :—

Disability of ward to contract, etc.

'60. No ward shall be competent, without the leave of the Court, to transfer or create any charge on, or interest in, his property or any part thereof, or to enter into any contract which may involve him in pecuniary liability.'"

"I observe that a similar section was suggested by the Bengal Government, and it is not clear from the papers circulated why the suggestion was not adopted. I applied for the correspondence that passed on the subject and referred to by the Hon'ble Mover in his first speech, but I was informed that the correspondence did not take place in the Legislative Department and that there was no likelihood of its being printed and circulated among the Members.

"It is my humble opinion that a clear prohibition against contracting debts is much more beneficial even to the general public than an indirect and indefinite prohibition such as that conveyed by section 13. It would at once save the creditors from throwing away their money and entering into litigation, whereas, if section 13 stands as it is, there is every chance of their being tempted to advance money in the hope of obtaining the consent of the Court of Wards for the execution of the decrees they may obtain, which hope may after all prove fruitless. Moreover, the principle of making the property answerable for debts, not upon the nature of the debt or purposes

for which it was made, but upon the unrestricted discretion of a Revenue authority to be exercised even after the latter has ceased to have anything to do with its management appears to me to be novel and unprecedented, and is in my opinion a greater violation of the rights of owners of property than that implied in the declaration that all contracts entered into during the period of management without the consent of the Court shall be void If I have correctly gauged native character I may say that all legislation of an indefinite character, though honestly meant for the protection and safety of the people, is always viewed by the public with a vague sense of distrust and suspicion, the possibility of which it should be our aim to prevent

"My Lord, I need hardly assure your Lordship that I have ventured this amendment and these remarks not in a spirit of hostility to the Bill but because I sympathise with the main object of the Bill and wish to make it as effective as possible for the attainment of its avowed object

The Hon ble SIR PHILIP HUTCHINS said —

"It has already been stated that the precise form which this particular provision should take was very fully discussed by the Select Committee, and it was also considered by Your Excellency personally and your Council when the Bill was before the Bengal Council We all thought that it would not be right entirely to disable the ward from contracting and the section as framed seems to give creditors ample notice that they have practically nothing but the ward s current allowance or goods to look to I am not at all sure that section 68 of the Contract Act would have any effect in the case of a ward with a sufficient allowance, and, even if it does apply I do not see why the ward should be prevented from obtaining something beyond bare necessaries It may be noticed that the Hon ble Judges of the High Court have taken no objection to this part of the Bill

His Honour THE LIEUTENANT-GOVERNOR said —

"I think it right to say with regard to this section, that as far as my private judgment is concerned my views agree with those expressed by Mr. Chentsal Rao Personally I should have preferred the section extracted from the Central Provinces Act and adopted by the Bengal Government, but it was discussed by Your Excellency s Council very fully the arguments which Sir Philip Hutchins has repeated in this Council were brought forward and were considered to preponderate, and I felt bound to bow to the authority of that decision I feel satisfied that the clause as now drafted will meet all the practical ends which I have aimed at. It is possible that there may be here and there a case in

which it does not meet them but the hardship which might thus be caused would be very unlikely to occur, and it would hardly be necessary therefore for us to provide for it

"Under these circumstances I am prepared to waive my objection and to accept the section as drafted by the Select Committee"

The Motion was put and negatived.

The Hon'ble SIR JOHN EDGAR moved that the Bill, as amended, be passed

The Motion was put and agreed to

BENGAL MILITARY POLICE BILL

The Hon'ble SIR JOHN EDGAR also moved that the Report of the Select Committee on the Bill for the Regulation of the Bengal Military Police be taken into consideration He said —

"The Select Committee have made scarcely any changes in the Bill as introduced, and the changes made were mainly with the intention of improving the wording of the Bill as drafted One section was shortened and another was made more clear, some parts of other two sections were omitted There is practically nothing to be said about these alterations, and the reasons for which the Bill has been introduced have been already explained

The Motion was put and agreed to

The Hon ble SIR JOHN EDGAR also moved that the Bill, as amended, be passed

The Motion was put and agreed to

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PROCEDURE AMENDMENT BILL

The Hon'ble SIR ALEXANDER MILLER asked leave to postpone the motion which stood in his name that the Bill to amend the Indian Limitation Act, 1877, and the Code of Civil Procedure be taken into consideration He said that since he had put this notice on the paper he had received a telegram from his friend the Chief Justice of the High Court at Allahabad in which he said that

there were cases pending there now which he did not think that the Bill as drawn would cover. He proposed therefore not to make this motion at present, and he would move that it might be postponed until the next session at Simla, when the matter could be considered.

Leave was granted.

PARTITION BILL.

The Hon'ble DR. RASHBEHARY GHOSE moved for leave to introduce a Bill to amend the Law relating to Partition. He said:—

"I propose to state briefly the present condition of the law on the subject, the alterations it is proposed to introduce, and the grounds on which such alterations would seem to be desirable. In this country, where coparcenary is one of the commonest modes of holding property, the proper method of effecting a partition must always be a question of considerable importance. But, if we except the different local laws concerned with the division of revenue-paying estates, the only statutory enactment on the subject is to be found in section 396 of the Civil Procedure Code. Under this section, which embodies the practice of the English Court of Chancery prior to the Partition Act of 1868, a commission is issued by the Court to certain persons,—the canonical number is three,—who are directed, in the first instance, to ascertain and inspect the property and to divide it into the requisite number of shares, with authority in some cases to make payments in money by way of equality of partition. The next duty of the Commissioners is to prepare a report, or, if they cannot agree, separate reports, which are however liable to be quashed by the Court, when a new commission is issued in the same terms and with possibly the same result. In England this cumbrous, dilatory and expensive procedure has been replaced, in most cases, by Statute, by the much simpler method of a sale of the property and a division of the proceeds. Under the old Chancery practice, which has been reproduced in our Code, no amount of inconvenience or practical difficulty, however great, could prevail against a claim for partition. I will here give only one illustration. In the well-known case of *Turner* v. *Morgan*, reported not in the pages of Dickens but in Vesey, where a house had to be divided between two persons, and one of the parties insisted upon a partition by metes and bounds, the Lord Chancellor said that out of mercy to the parties he would let the case stand over, as the worst thing for the parties would be a decree for partition, and His Lordship suggested a reference as to the value and to which party the option of buying or selling should be given. The

suggestion was not accepted, and when the Commissioners allotted to one of the parties the whole stack of chimneys, all the fire-places, the only staircase and all the conveniences in the yard, the Lord Chancellor declined to interfere because he did not know how to make a better partition. The well-known Greek saying that the half is better than the whole points a moral which I am afraid is too often lost on suitors. In India cases like *Turner* v. *Morgan* are, as might be expected, of frequent occurrence, and, as observed by Babu Amrito Lal Chatterjee, a Subordinate Judge of mature experience, one perverse member of a family may by his obstinacy practically ruin the whole property. The learned Judge mentions what he calls a typical case of its kind, and adds, 'such cases, though not very common, are not very rare in the country.' Mr. Neill, the Judicial Commissioner of the Central Provinces, also speaks of the extreme difficulty of partitioning some kinds of property under the present law, and points out that partition is not unfrequently made the occasion of annoyance by ill-conditioned coparceners. 'Cases,' adds Mr. Neill, 'have remained pending for years simply on account of the difficulty of making a partition under the present state of the law.' Other learned Judges have also expressed similar opinions, and, if some Judges have been more fortunate, it is due probably to mere accident if not to the occasional display of a vigour beyond the reach of law. I trust I have said enough to show that it cannot be affirmed that no amendment of the law is called for, as a state of things in which a judicial deadlock, so to speak, is possible can never be viewed with indifference by the Legislature. I may add that the question of amending the present law has been mooted from time to time, and a mass of valuable opinion—not the less valuable on account of the divergence of views which the communications disclose—have been collected by Government, and through the courtesy of the Hon'ble Member in charge of the Home Department placed at my disposal. In England, as I have already pointed out, the old procedure has been in a very large measure rendered obsolete by legislation. In this country, owing to the division and subdivision of landed property which is constantly taking place under the Hindu and Muhammadan laws of inheritance, the evil from one point of view is undoubtedly much greater; but the strong attachment of my countrymen to landed property, especially when it is ancestral, should make us extremely cautious in replacing in any particular case the usual remedy of an equal partition by a sale of the property and a division of the proceeds. Whether the sentiment which animates my countrymen is economically wise or not I need not pause here to discuss. I will only say that man does not live by political economy alone. The Hudibrastic rule is not the measure of all things, and there are currents

of thought and feeling deeper than any ever sounded by the economist's plummet. Speaking for myself, and as a Hindu, I am bound to say that I fully sympathise with the sentiment which attaches us to our landed possessions and should be sorry to see it disappear. It is a healthy sentiment and furnishes one of the best securities for the maintenance of law and order. Moreover, as we all know, laws must be adapted to the habits of society when not manifestly injurious to others and should not aim at remoulding such usages or habits even when they are the result of blind prejudice. We cannot therefore proceed too warily, and accordingly the power with which it is proposed to invest the Court is only given subject to very stringent conditions, and only to the extent necessary to meet an acknowledged evil. These conditions are (1) that the property cannot conveniently be divided; (2) that it would be more beneficial for the parties that it should be sold; (3) that at least one-half of the shareholders must concur in the sale. But, in order to prevent the possibility of a request for sale being made on inadequate grounds or from improper motives, provision is made for the compulsory transfer of their shares by the parties who desire a sale to the other shareholders at a valuation to be made by the Court. But, even when all these conditions exist, a large measure of discretion is left to the Court, which, I trust, will never be crystallized into a cluster of rigid rules.

"The result, therefore, is that, although the Court would be wholly unable to sell the property in the absence of any of the conditions imposed on the power, it may refuse to do so notwithstanding the existence of all these conditions if in the exercise of a sound discretion it is of opinion that no sale should take place in any particular case. I venture to think that with these safeguards the measure, while meeting an acknowledged evil, cannot fairly be charged with introducing any serious innovation, or with trenching in any degree on the rights of persons holding property in common. The question is one really of procedure, and the present Bill will merely affect the mode of relief and nothing else. Indeed, even under the present practice, when the Court gives compensation in money by way of equality of partition, it really makes a transfer of a part of the property, although the transaction is disguised under a slightly different name. The present Bill is only an extension of this practice to some very exceptional cases in which, in the absence of such a law, the common property might be destroyed or rendered comparatively valueless. I ought to add that it is a great satisfaction to me to find that the fathers of Hindu law who shaped out and elaborated our jurisprudence anticipated by several centuries the improvements only recently grafted on the old Chancery practice in England.

Speaking of indivisible property—a class in which Shankha and Likhita place dwelling-houses—Vriashpati declares :—

They (the sages) by whom it is ordained that clothes and the like are not liable to partition have not decided (as to what should be done with respect to such things). The estate of opulent men, consisting of vehicles and ornaments, if held in common (by his heirs) would be unemployed, for it cannot be allotted to any one (of the co-heirs) Therefore it must be divided in an equitable manner; else it would be useless. An equitable partition is made, by (distribution of the price after) the SALE of clothes and ornaments, by distribution of a written debt after recovery, by exchanging the dressed food with an equal allotment of undressed grain, by drawing water of a single well or pond for use according to need, * * *.' *Digest V, 366, Vivada-Ratnakara, Asiatic Society's Sanskrit edition, 505*

"The practice of giving money compensation in certain cases is also, I am glad to find, recognized in the Muhammadan law (Hedaya, Bk. 39, Ch. 3).

"I should add that, when the Court finds it necessary to direct a sale of the property, the co sharers will not only be at liberty to bid but a right in the nature of pre-emption has been conceded to them. The only other section of the Bill to which it is necessary to call attention is section 4, which compels a stranger who has bought a share of a dwelling-house belonging to an undivided family to transfer it to the members of the family if they undertake to buy it upon a valuation to be made by the Court. To those who are familiar with the habits, usages and feelings of my countrymen, I need hardly say that the intrusion of a stranger into the family dwelling-house is regarded as nothing short of a calamity. The mischief has been remedied to a certain extent by section 44, paragraph 2, of the Transfer of Property Act, an enactment which recognises—and, if I may say so, very properly recognises—the truth of the poet's saying, not always perhaps borne in mind, that 'right too rigid hardens into wrong.' In conclusion, I will only say that, although it is somewhat rash to make any general assertions, I trust I may safely affirm that whatever hostile criticism may be levelled against the other parts of the Bill, a provision which protects the family dwelling-house from the intrusion of a stranger into any portion of it will be welcomed as a boon and a blessing by my countrymen of every creed and of every shade of opinion."

The Hon'ble SIR PHILIP HUTCHINS said :—

"My hon'ble friend the mover has favoured me with a copy of his Bill, and I think the Government of India may welcome it as a fair and moderate measure, calculated to remove a difficulty which, although personally I have

some doubt as to its existence to the full extent alleged many able and experienced Judges have felt in executing decrees for partition The details will of course be subjected to scrutiny and careful consideration by a Select Committee after public opinion has been elicited"

The Motion was put and agreed to

The Hon ble DR RASHBEHARY GHOSE also introduced the Bill

The Hon ble DR RASHBEHARY GHOSE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to

The Council adjourned *sine die*

S HARVLY JAMES,
Secretary to the Government of India,
Legislative Department

CALCUTTA,
The 29th March, 1892

Government of India Central Printing Office —No. 256 L D —30-3-92 —300 —A E des

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 28th July, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G M I.E., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.
The Hon'ble G. R. Elsmie.

NEW MEMBER.

The Hon'ble MR. ELSMIE took his seat as an Additional Member of Council.

MADRAS CITY CIVIL COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS presented the final Report of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Crosthwaite, the Hon'ble Mr. Elsmie and the Mover.

The Motion was put and agreed to.

INDIAN LIMITATION ACT, 1877, AND CODE OF CIVIL PROCEDURE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Indian Limitation Act, 1877, and the Code of Civil Procedure be taken into consideration.

The Motion was put and agreed to

The Hon'ble SIR PHILIP HUTCHINS said that he wished to suggest an amendment with reference to the first section of the Bill. He had not prepared any formal amendment, as he had not had time to do so, the papers having only reached him yesterday. He had, however, mentioned the matter to the Hon'ble Member in charge of the Bill. He wished to omit from the section referred to, which was to be inserted after section 5 in the Limitation Act, the words "at the time when he presented such appeal or application," and also other words in the lines following relating to the same time. It seemed to him that if the Court was satisfied that the appellant had been misled, and that it was solely owing to his being misled that the appeal was out of time, the Legislature ought to allow the appeal to be admitted. It ought not to be required that he should show that he was still misled at the moment that he presented the appeal, or that the misleading order, practice or judgment should cease to be an excuse from the moment that it was overruled. A man ought to have reasonable time to become acquainted with the new decision and to conform himself to it. He would like the words in the section, "a Court," to be altered into "*the* Court;" the words already quoted—"at the time when he presented such appeal or application"—to be omitted; and he would also like the words "then unrepealed," "than existing" and "not then overruled" to be left out. The section would then run as follows:

Limitation for certain appeals or applications for review of judgment.

"5A. Whenever it is shown to the satisfaction of the Court that an appeal or an application for a review of judgment was presented after the expiration of the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice or judgment of the High Court of the Presidency, Province or District, such appeal or application, if otherwise in accordance with law, shall for all purposes be deemed by all Courts to have been presented within the period of limitation prescribed therefor"

The Hon'ble SIR ALEXANDER MILLER said that he had no objection whatever to the alteration, which seemed to him an improvement. He should,

however, like to mention that the section in question was drafted, he believed, by Mr Justice Straight—at any rate by the Judges of the Allahabad High Court—in order to cover the particular decision which gave rise to the Bill. It would, however, still cover that decision, and he did not think that there could be any objection on their part to the proposed alteration.

The Hon'ble SIR PHILIP HUTCHINS then moved that section 1 should be amended in the manner which he had described.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the words "appealed from" be inserted after "decree" in the explanation to section 375A of the Code of Civil Procedure added by section 2 of the Bill.

He said that it was originally intended to point out that an application to the Appellate Court pending an appeal was not an application subsequent to the decree, but of course it was only in the case where it was an appeal from the decree. If the appeal was from something other than the decree, then it might, or might not, be subsequent to it. It was therefore necessary to insert the words "appealed from".

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the following section be added to the Bill:

Application of Act.

"5. The provisions of this Act shall apply to every appeal and review of judgment heard after the passing hereof, notwithstanding that the judgment appealed from or under review may have been passed, or the petition of appeal or application for review presented, before the passing of this Act."

He said that it was pointed out to him, when he was at Allahabad, that there were a number of appeals pending there which, if the law to be applied to them was that which existed at the time when the original decrees were passed, were wrong, that is to say, appeals from decisions which, as the law stood when they were made, were right, but which, if this law were introduced, would become wrong. It was pointed out that it would be the duty of the High Court when an appeal came on to consider whether the decision was technically right at the time when it was pronounced, and it had been suggested that that could

be obviated by declaring that the law "always had been" what this Bill proposed now to make it. That would, however, have been legislatively to declare that the previous decisions of the Allahabad High Court had been wrong, a course which he did not think admissible, and he had therefore prepared a clause, the object of which was to apply the new rules without stating that the old decision was wrong; because, even if it would ever be proper for this Council to say that a High Court had miscarried, this was not a case in which he would think it right to do so. At the same time it was desirable to apply the new rules, and the reason why he had not put the provision in earlier was that he was considering what form of words would have that effect without appearing to throw any discredit on the decisions appealed from. He thought that the provision which he proposed now to insert would have that effect.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved for leave to introduce a Bill to further provide for the Administration of Towns in Lower Burma. He said:—

"The Bill is almost a transcript of Regulation No. VI of 1891, which was enacted to provide for the administration of towns in Upper Burma.

"The Bill is in the main a measure of police. The police administration in Burma, as in other parts of the Indian Empire, and perhaps more than in other parts, offers problems of much difficulty. One of the most difficult is how to get the police force into touch with the people, and to obtain their goodwill and assistance, without which the task of detecting and repressing crime is very hard.

"One cause of our difficulties has been that we have neglected the old indigenous institutions of the country, and have endeavoured to work entirely through a police department which has no close connection with the people.

1892.] [*Sir Charles Crosthwaite.*]

"When we annexed Upper Burma, we were brought into contact with the indigenous system, and by means of the Village Regulation, and afterwards of the Upper Burma Towns Regulation, a timely and, as I believe the records of the Burman administration will show, a successful effort was made to preserve and utilize that system and to connect it with our police. As the success of the Village Regulation led to its adaptation to Lower Burma, where the indigenous institutions of the country have been partially overlaid and destroyed, so the success of the Upper Burma Towns Regulation has led the Chief Commissioner to ask for a similar enactment for Lower Burma towns. All over Burma there was in former times a police machinery by which villages and portions of towns had their headmen, under whom were minor officials, each entrusted with the supervision of a number of houses, usually ten. Even where this machinery has from neglect fallen into disuse, the people are readily induced to adopt it again, and take to it without difficulty. As an example and proof of this, I may state that in 1883 Rangoon and its neighbourhood were in a very disturbed state. Dacoities and robberies were frequent, and life and property both unsafe. The police were helpless and disheartened, although their Superintendent, the late Mr. Jameson, was one of the most experienced and able officers in Burma. Like most successful Indian administrators, he took counsel of the people of the country, and at their desire the old system was reverted to. The town was divided into wards, and Myogan-lugyis, which is the Burmese translation of aldermen, were appointed, who undertook to help the police to supervise the bad characters and prevent crime. The system has been worked now for nearly ten years without legislative sanction, and, as the Chief Commissioner reports, since that time Rangoon has been remarkably free from crimes of violence, and it is generally believed that the Myogan-lugyi system has contributed materially to its immunity from disturbance.' I mention this instance to show that the Bill, which may be described as the legal expression of the Rangoon system, contains nothing that is new or strange to the country, but rather proposes to revive old institutions which have not yet altogether disappeared, and which, when restored, will be welcome to the people.

"The measure is of a very simple character, its main provisions being (1) the division of towns into wards and blocks; (2) the appointment of persons to be headmen of wards or aldermen of blocks; (3) the conferment on such headmen and aldermen of certain powers and the imposition on them of certain duties. I may add that, although for police purposes it is proposed to apply the Bill to all towns, yet care will be taken to interfere in no way with the duties, powers and

responsibilities of municipal committees, and the Bill is so drawn as to enable the Chief Commissioner in each case to restrict the general duties of headmen and elders to such limits as may appear to him fit."

The Motion was put and agreed to.

The Hon'ble SIR CHARLES CROSTHWAITE also introduced the Bill.

The Hon'ble SIR CHARLES CROSTHWAITE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 11th August, 1892.

J. M. MACPHERSON,

Offg. Secretary to the Government of India,
Legislative Department.

SIMLA;
The 29th July, 1892.

G. C. Press, Simla.—No. 163 L. D.—8-8-92.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 11th August, 1892.

PRESENT:

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.
The Hon'ble G. R. Elsmie.

MADRAS CITY CIVIL COURT BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Reports of the Select Committee on the Bill to extend the jurisdiction of the Court of Small Causes of Madras be taken into consideration. He said:—

"Rather more than a twelvemonth has elapsed since I first brought this measure before the Council, and both then and on various subsequent occasions I have explained its provisions, and dealt with objections, at considerable length. In now moving that the Bill be passed, as finally settled by the Select Committee, I will endeavour to be as brief as possible, and I will confine myself almost exclusively to such arguments or representations as have been put forward since I addressed the Council in Calcutta. It will be remembered that a large Select Committee had then framed what appeared to be a workable scheme, but that we thought it desirable to have the details again scrutinized by the local authorities, and the persons locally interested, before it should be passed into law. A few criticisms and suggestions have since been received from the Hon'ble the Judges of the High Court and the Local Government, but almost all of these have been fully dealt with in the final Report which I had the honour to present a fortnight ago, and I do not think it necessary to take up the time of the

Council with any further observations regarding them. I believe my hon'ble friend Sir Alexander Miller will have something to say about the concurrent jurisdiction of the High Court, but that topic I will leave to him. It has been suggested that special provision is required to prevent Chapter XX of the Code of Civil Procedure from applying to the new City Court, but section 360A, which was inserted at the end of that chapter by Act VII of 1888, provides that nothing in it shall apply to any Court within the limits of any of the Presidency towns. That is sufficient in itself without any saving clause, and I shall presently move that the last section of the Bill, which is not referred to in our Report and was not intended to be retained, be struck out as superfluous.

"In the last paragraph of their letter the Judges of the High Court unanimously recommend that the Bill be passed into law at an early date, and this has always been the desire of the Local Government. It is also the view held by the native community, as hon'ble members know from the speech addressed to them at Calcutta by my hon'ble friend Mr. Chentsal Row; and I explained on the same occasion that the native community were the persons chiefly interested. The effect of the Bill will be to establish what may be briefly described as a District Munsif's Court in the city of Madras, and to transfer to it the cognizance of ordinary suits, not of the nature of small causes and not exceeding in value Rs. 2,500, which is the pecuniary limit of a District Munsif's jurisdiction in the Madras Presidency. The petty litigation with which Europeans are concerned is generally cognizable by the Court of Small Causes. It must be very rare, for instance, that any member of the Chamber of Commerce or Trades Association is a party to a suit relating to immoveable property of a less value than Rs. 2,500. Nevertheless it is right that every objection which those bodies have put forward should be fully and fairly considered.

"And this is more especially necessary because the Trades Association in their last letter have made the complaint that 'while prominence is given to communications from the Vakils Association, the Mylapore Athenæum and the Mahajana Sabha, the reports of the Chamber of Commerce and of the Trades Association have been *entirely ignored.*' I am sure, if the Association had done me the honour to read my speeches on the subject of this Bill, no such complaint would have been possible. It is based solely on the fact that the Select Committee's Reports give in the margin a list of the papers which have been considered by them, and that this list only sets out the communications addressed direct to the Legislative Department, and not their various enclosures. Thus, in the Report dated 23rd March last the letters of the Chamber and the Association appear only as 'accompaniments' to an 'endorsement from the Home Department;' and similarly

the latest letters from those bodies—the letters, that is to say, to which I am now referring—are only mentioned in our final Report as enclosures in a letter from the Government of Madras to which they were addressed. Upon this slender foundation the Association has thought fit to charge the Government of India, and myself in particular, with a want 'of that fairness and impartiality which ought to characterize all proceedings in which an important public matter is concerned.'

"As a further instance of the spirit in which the Association has dealt with this 'important public matter,' and I think I may say also of the straits to which it is reduced for arguments to support its position, it states, almost in so many words, that this Council proposes to enact only that the Local Government *may* establish the new City Court, because we are afraid ourselves to assume the responsibility of establishing it. The reasons why the Bill has taken this shape are sufficiently obvious to any unprejudiced mind: it is a mere local enactment, and the Local Government alone can decide the most convenient time for calling the new tribunal into existence.

"Next, the Association expresses in general terms its apprehension that the passing of this Bill may, in course of time, lead to the total abolition of the High Court's original jurisdiction. I dealt with this aspect of the question so fully at Calcutta that I have really nothing to add to what I then said. It would almost appear that the Association has not taken the trouble to read my remarks: at all events it has not attempted to answer them.

"Turning now to the letter of the Chamber of Commerce, I am glad to say that I only find one remark open to any such objection as I have been constrained to raise to that of the Association. The Chamber alludes to the 'hurry with which the Bill is being rushed through Council.' The misapprehension as to this point which occurred last year must have been fully cleared up by my introductory speech. Till now, I have not seen the charge of hurry repeated. As a matter of fact the Bill has been before this Council for upwards of a year, and it was again referred to Madras in March last, although it might have been passed then, because the Select Committee thought it right to avoid even an appearance of haste. We shall see presently that the matter was well known to the Chamber long before 1889.

"The Chamber 'solemnly deprecates any legislation calculated in the smallest degree to impair the dignity, independence and usefulness of the High Court,' but this only expresses my own earnest conviction.. How the dignity or

independence of the Judges can be impaired by simply furnishing an auxiliary tribunal to relieve them of such petty cases as they do not think it desirable to call up for trial before themselves has not been explained, and is, as I have frequently submitted, incapable of explanation. The Hon'ble the Judges may surely be left to take care of their own dignity and independence, and we have seen that they are anxious to get the new Court established at once. The measure indeed emanated from the High Court, which shows how entirely fallacious it is to describe it as an insidious encroachment of the Executive. And as for the High Court's usefulness, this must be increased rather than diminished by enabling it to devote all its time to business really requiring for its disposal that learning, ability and experience for which its Judges are so justly esteemed. The lamentable waste of judicial power now exhibited daily in the Court was one of the chief grounds which led to the initiation of this measure.

"The other main ground, it will be remembered, was the 'practical denial of justice to a not insignificant portion of the inhabitants,' which the High Court and the Local Government had long admitted to exist. The section of the community referred to was, as I have already stated, the native inhabitants, who alone are concerned with immoveable property of small value, as well as with most other descriptions of petty litigation, not being small causes. It seems still to be doubted in some quarters whether such a denial of justice really exists, but on that point I do not wish to add anything to what I said in Calcutta. It has been suggested also that such denial of justice as exists is for the most part confined to the Black Town. Even if this were the case, the new Court would be equally needed to provide a remedy; but nothing has been advanced which leads me to think that there is not as great or a greater denial of justice to the inhabitants of the 26 square miles, more or less densely populated, outside the single square mile which constitutes Black Town. Certainly the fact, if it be a fact, that most of the petty cases which are now brought to Court come from Black Town, does not establish that the evil is confined to that area. It would indeed rather indicate the contrary, for it would seem to show that the people of Black Town are not even now backward about coming to Court, while those who are deterred by the delays and expense of a suit in the High Court live in the suburbs. Taking all the suburbs together I should guess that their inhabitants are at least equal in number to the residents of Black Town: they certainly cannot be much fewer

"The Chamber, however, draws 'attention to the fact that the Deputy Collector of Madras now deals with hundreds of small cases, apparently to the perfect satis-

faction of applicants.' I presume that the reference is to the Quit-Rent Registration Office. Is the Chamber aware that this is merely an office for the transmutation of names and has absolutely no jurisdiction in disputed cases? In five-sixths of the cases coming before the Deputy Collector there is no dispute at all. He refuses certificates whenever the applicants are not in possession—the usual case in which they would be likely to come into Court—whenever the title-deeds are not produced by them, and whenever an objection is raised by any other party which is not obviously untenable. I cannot give the number of cases in which he overrules objections as untenable, but if they are at all numerous, since the only indication that the objectors are 'satisfied' is that they refrain from coming into Court, it seems pretty clear that there must be, as it is generally admitted that there is, some very strong impediment in the way of resort to the High Court.

"I think I have now dealt with all the objections raised by the Chamber and by the Trades Association. The fact, however, remains that they have both taken up a position of strong hostility to this legislation, and, if their opposition had been either consistent or based on reasonable grounds, I should have been the last to contend that their opinion is not entitled to very great weight. But I think I have shown that they have not adduced any strong reasons, and certainly they have not been consistent. On the contrary, they have twice deliberately declared themselves to be in favour of the very measure which they now oppose. It has indeed been stated that the two measures—that originally proposed and that formulated in the present Bill—are essentially different, and hard things have been said of me as if I had tried to conceal the differences. It is time that I should clear up this point, and this can best be done by quoting the very words of the correspondence. Early in 1889 the nature of the scheme was laid before the merchants and traders of Madras in the following terms:—

'The proposal is to add a Judge and a regular side to the Court of Small Causes, and the effect of the changes will be that all cases not of a small cause nature, and not exceeding Rs. 2,500 in value, will be instituted in the Court of Small Causes instead of in the High Court, and ordinarily be tried by one or other of the Judges of the former Court as regular suits, and subject to the general law as to appeals and procedure The appeal will lie to the High Court, and it has also been *suggested* that a similar right of appeal be conceded even in small causes ranging from Rs. 1,000 to Rs. 2,000 in value which are now tried summarily. The High Court will, of course, be competent to call up cases to their own file, and it is *understood* that they will readily exercise their power in all cases involving questions of mercantile law and usage.'

"For the regular side of the Small Cause Court a separate Court has now been substituted at the special request of the inhabitants of Madras, assembled in public meeting. The suggestion that an appeal might perhaps be given in small causes between Rs. 1,000 and Rs. 2,000 in value was objected to by the Secretary of State, but will be further considered in connection with the amendment of the Presidency Small Cause Courts Act: the omission of this provision is certainly not the reason for the Chamber's change of front. The High Court has power to call up cases, and I still understand that they will be ready to do this whenever sufficiently strong grounds can be made out, such as that the case involves difficult questions of mercantile law which should not be left for determination by the City Court; obviously the Executive Government could not express, nor did the Chamber understand them as expressing, more than a *belief* that the Hon'ble Judges would do this. In all other respects the proposal originally sketched is identical with the measure now under consideration. Let us now see the replies.

"The Chairman of the Trades Association wrote on the 12th February, 1889, that 'after careful consideration the members are unanimously of opinion that the change proposed would afford great relief to the High Court and be beneficial and a great convenience to suitors.' In his last letter, dated 17th May, 1892, the Chairman has been pleased to describe this emphatic approval as a 'tacit consent' given 'under a misapprehension'; and this in the same paragraph in which he complains of a want of fairness!

"The reply of the Chamber of Commerce alluded to 'the changes referred to as having been under consideration for a long period.' They had only abstained from expressing their views on the subject because they had 'not been definitely informed that those changes had been recommended by the Madras Government.' They then recited the actual proposals, as well as the *suggestion* about appeals in small causes above Rs. 1,000 in value and the *belief* that the High Court would still try important mercantile cases, and finally they informed the Government that the Chamber approved of the proposals, subject to a condition which has been agreed to and is now immaterial. But perhaps it will be better to give their own words, lest I should again be charged with misrepresentation. They wrote:—

'It is observed that the Government of India is under some misapprehension as to the attitude of the mercantile community of Madras towards the proposal, and alludes to the circumstance that that community has not thought it necessary to make any representation against it. The changes referred to have been under consideration for a long

period, but the Chamber was not definitely informed that those changes had been recommended by the Madras Government for the sanction of the Secretary of State. The Chamber trusts, therefore, that the Government of India will not suppose that the mercantile community is indifferent to a scheme which is calculated to affect the interests of commerce.

'It is gathered from the letter of the Government of India that it is proposed to add a Judge and a regular side to the Court of Small Causes, Madras, so that all cases not of a small cause nature, and not exceeding Rs. 2,500 in value, will be instituted in the Small Cause Court instead of in the High Court, and that an appeal will lie to the High Court. It is further suggested that a similar right of appeal be conceded to small causes ranging from Rs. 1,000 to Rs. 2,000 in value which are now tried summarily, and the belief is expressed that the High Court will readily exercise the power conferred upon it of calling up all cases involving questions of mercantile law and usage.

'I have now the honour to inform you that the Chamber approves of the proposals, provided that the services of a sixth Judge of the High Court are not dispensed with until it is satisfactorily established that the relief afforded by the proposed change will reduce the work of that Court to dimensions that can be efficiently dealt with by a smaller number of Judges than six.'

"So much for the first occasion

"Again, last September, the members of the Chamber of Commerce and of the Trades Association took a prominent part in calling a public meeting to discuss this Bill as it was then formulated. They were also among the most prominent speakers, and the Chairman of the Chamber, my friend Mr. Turnbull, occupied the chair at the meeting. The resolutions had to be revised, but eventually they were all carried unanimously and a Committee was appointed to submit them to this Hon'ble Council. The third resolution runs as follows :—

'This meeting is of opinion that there do exist a hardship and a practical denial of justice to a not insignificant portion of the inhabitants of this city under the present system of judicial administration in the Presidency-town, but that the proper remedy should be sought in the creation of a new tribunal, presided over by Judges selected from the legal profession, and having regular jurisdiction to try suits (with certain exceptions) up to Rs. 2,500, now tried by the High Court, and suits above Rs 1,000, now tried by the Presidency Small Cause Court."

"Two of the points here referred to—the qualifications of the Judge and the granting of an appeal from a Small Cause Court decree for more than Rs. 1,000—are to be considered, and will I hope be satisfactorily met, along with the amendment of the Presidency Small Courts Act. Neither of these is an essential part of the resolution, and in all other respects the Bill now on the table

gives effect to everything desired by the resolution. Now, of course, I do not know whether the resolution which was submitted to us under Mr. Turnbull's signature expressed the real views of himself and his colleagues, or whether they merely agreed to it by way of compromise in order to get some other resolutions carried; but I submit with confidence that in either case they are completely bound by it, and that it no longer lies in their mouths, unless a complete change of circumstances has taken place, either to say that no hardship, no denial of justice, exists, or to oppose the creation of the new Court which the resolution declares to be the proper remedy for that evil.

"There is just one other paper, my Lord, to which I ought to refer before I bring this already long speech to a close, and that is a letter from the Secretary to the European and Anglo-Indian Defence Association, dated 16th April last. In my speech at Calcutta I am afraid I passed over one of their suggestions rather too curtly, as I feared I was fatiguing the Council. It was one that certainly deserved further notice if I had not been abundantly satisfied that it would not apply to Madras, which was the only place in question. The suggestion is that the ministerial officers should relieve the Judges of some of their work, and that it would be cheaper to strengthen the ministerial staff of the High Court than to create another tribunal. This matter came under the consideration of the Madras High Court when I had the honour of being one of its Judges, and every sort of business which, in our judgment, could properly be entrusted to ministerial officers was so transferred by an order under section 637 of the Code. But from the further explanations now offered by the Association I gather that what they really mean to suggest is that a Master or Commissioner might be appointed to take accounts and conduct enquiries into other similar matters which might be specially referred to them by the Court from time to time. Whether this would be effectual in Calcutta or Bombay is more than I can say, but such an officer is certainly not wanted in Madras. If a Barrister, as is obviously intended, he would have to be paid at least as high a salary as the Judge of the City Court, and he would have but little work and would afford the Court very much less relief. There was an officer of this description some years ago, but it was found necessary to abolish the appointment, and there has been no such change of circumstances as to render it desirable to call it again into existence."

The Hon'ble SIR ALEXANDER MILLER said —

"When this Bill was first introduced it contained a provision applying section 15 of the Civil Procedure Code to the Court about to be instituted,

I confess that it appeared to me—apart from the very doubtful question whether it is or is not within the authority entrusted to this Council to interfere with the original jurisdiction of a chartered High Court—at any rate a proposition which involved very important and, as it seemed to me, very serious consequences. But my difficulty was entirely removed when my hon'ble friend Sir Philip Hutchins was willing to assent to a clause which expressly preserves all the jurisdiction of the High Court and merely establishes a Court alongside of it having a more limited jurisdiction and to which the Judges of the High Courts may themselves, if they think fit, refer cases which otherwise come within their jurisdiction. Strange to say, the only body which has expressed itself anxious that the jurisdiction of the High Court should be taken away are the Judges of the High Court themselves. The majority of the Judges of the Madras High Court have expressed a wish that the concurrent jurisdiction should be abolished, and that this City Court should be made the sole Court to have cognizance of cases which come within the jurisdiction given to it. However, I certainly, for one, could not, with the views which I hold, have assented to that course; but it is rather singular that the Trades Association and the Chamber of Commerce, who now treat this Bill as an attempt to destroy the independence of the High Court, are more anxious for the retention of the High Court jurisdiction than the Judges of the High Court themselves. It seemed to the Select Committee that the criticisms which were offered by the bodies which I have mentioned were mutually destructive. The High Court Judges, as I have said, thought that it would have been better to exclude altogether the concurrent jurisdiction of the High Court in respect to suits of small value, and they say that course is preferable to an endeavour to keep them out of the High Court by what they call "penal" clauses. They seem to think that the sole reason for not excluding the concurrent jurisdiction of the High Court was to be found in an observation, entitled to very great weight, by Sir Henry Maine, which they proceed to combat; but in point of fact, even if there had been no question of the right of this Council to interfere with the jurisdiction of the High Court—if the terms of the Act of Parliament had been so clear that no question could possibly arise—I, at any rate, should still have thought it very much better to retain the concurrent jurisdiction, because I consider that a plaintiff who is willing to pay for it has a perfect right to the services of the highest Judges in the land. I should take care that, if he chooses to go to a Court which involves more expense than the Court which might have given him the relief which he desires, he, and not his opponent, should pay for the luxury; but I have a very strong feeling that we ought not to debar any man, who is willing to incur the additional expense, from the services of the highest Judges in the

land with respect to any case however petty. The Madras Trades Association are very strong, indeed, in their opposition to any interference, however minute, with the original jurisdiction of the High Court, and, calling attention to the last paragraph of the last Report but one, they point out that if the Indian Legislature is incompetent to abolish the original jurisdiction of the High Court, it is also incompetent 'to enact a penal clause the effect of which must be to hinder suitors from resorting to the High Court in the exercise of its original jurisdiction;' and they go on to say that the result of the procedure established by this Bill will be that, in course of time, the original jurisdiction of the Madras High Court will be abolished altogether, and that it will become a mere Court of Appeal. I can only say that it appears to me that they cannot have read the provisions of the Bill which they were criticising. Under the Bill, any party who pleases is at liberty to bring in the High Court any suit which he might have brought if this Bill had never been introduced, and it is entirely in the discretion of the Judge of the High Court himself, before the case is tried, to say whether it is a case which ought properly to have been brought in the High Court, or which ought to have been brought in the City Court; and what they call the penal consequences mean nothing more or less than this, that the plaintiff, if he wishes for the luxury of an expensive Court, when, in the opinion of the Judge who tries the case, he had an adequate remedy of a less expensive kind, should pay for that luxury himself; while, on the other hand, the defendant has no cause of complaint at having to pay the full costs if the Judge who tries the case thinks that it was a proper one to be brought before the High Court. So far, indeed, from interfering with the independence of the Judges, we are giving them a new and independent discretion. It is not a new thing either, for this is exactly the discretion which late County Courts Acts have given to the Judges of the High Court in England, and I have never heard it suggested that the independence of that Court has been in any way interfered with by any modern legislation.

"On the other points of the Bill I am contented to leave the matter to the speech of my hon'ble friend Sir Philip Hutchins; but I would add this, that, as regards the suggestion made in some of the criticisms for relieving the Judges of the High Court by giving judicial powers to ministerial officers of that Court, the experiment was tried in England under the Bankruptcy Act of 1869, and was a most lamentable failure. I believe that any attempt of the kind would involve one of two things—either a constant appeal to the Judges to set right the mistakes of the ministerial officers, or the appointment of men far

above the requirements of their ministerial duties to do the judicial work. There would be no beneficial gain in either case: in the first case, there would be a waste of time and money; and, in the second case, it would be creating an unnecessarily expensive machinery to do the ministerial work, which ought to be done by a cheaper and totally different class of officers."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS moved that section 19 of Bill No. III (*as revised*) be omitted.

He said that he had explained in the course of his speech that the reason why this section was superfluous was because section 360A of the Civil Procedure Code distinctly stated that nothing in Chapter XX should apply to any Court within the local limits of the High Courts' original jurisdiction. The City Court was such a Court, and section 360A prevented the chapter of the Civil Procedure Code from applying to that Court. He, therefore, thought that the section was superfluous and should be omitted.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that in section 15, sub-section (*a*), line 3, of Bill No. III (*as revised*), after the word "for" the words "an appeal from" be inserted.

He said that the section as it stood ran as follows:—

"The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for a decree or order of the High Court in the exercise of its original jurisdiction."

He explained that the omission of the words which he proposed to insert was no doubt a printer's error, and that the meaning obviously was "an appeal from a decree or order of the High Court," &c. The insertion of the words would make the meaning of the sub-section more clear.

The Hon'ble SIR PHILIP HUTCHINS said that he accepted his hon'ble friend's amendment.

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

[*Sir Charles Crosthwaite; Sir Alexander Miller.*] [11TH AUGUST, 1892.]

LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved that the Bill to further provide for the administration of Towns in Lower Burma be referred to a Select Committee consisting of the Hon'ble Sir Philip Hutchins, the Hon'ble Sir Alexander Miller and the mover, with instructions to report after a month.

The Motion was put and agreed to.

PORAHAT ESTATE BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to annex the estate of Porahat to the Singhbhum District, and for certain other purposes. He said:—

"The estate of Porahat is a small estate which was confiscated in 1858, and apparently has been administered by the Deputy Commissioner of Singhbhum ever since without any regular incorporation in the district. But Sir Charles Elliott is of opinion that it would be proper that it should be formally attached to the Lieutenant-Governorship of Bengal and put under the Deputy Commissioner as part of his district. A proclamation has issued formally annexing the estate to the Bengal Province, and now it is necessary to introduce a Bill for the purpose of making it part of the district. The Bill is drawn on the same lines as that which was enacted in 1886 in respect to Jhansi and Morar, and it is of a purely formal character."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Calcutta Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned *sine die.*

J. M. MACPHERSON,

Offg. Secretary to the Government of India,
Legislative Department.

SIMLA;
The 12th August, 1892.

G. C. Press, Simla.—No. 192 L D.—12-8-92.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict, cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 13th October, 1892.

PRESENT.

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G M I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R A.
The Hon'ble Sir P. P. Hutchins, K.C.S.I.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R A.
The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.
The Hon'ble J. L. Mackay, C.I.E.
The Hon'ble G. R. Elsmie.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS presented the Report of the Select Committee on the Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management.

LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE presented the Report of the Select Committee on the Bill to further provide for the Administration of Towns in Lower Burma. He said that the Committee had received no criticisms on the Bill.

BILL TO LEGALIZE EXECUTION IN BRITISH INDIA OF CAPITAL SENTENCES PASSED BY BRITISH COURTS IN FOREIGN TERRITORY.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to legalize in certain cases the execution within British India of capital

sentences which have been passed by British Courts exercising in or with respect to foreign territory jurisdiction which the Governor General in Council has in such territory. He said:—

"In the Prisoners Act of 1871 power is given for the detention of prisoners in British India in cases where they have been sentenced by British Courts in the Native States, but no power is given by that Act for the execution of death sentences pronounced by such Courts. It appears that there are several small Native States, in connection with the Bombay Presidency particularly, in which no proper machinery exists either for the detention or the execution of prisoners who have been condemned to death; and, after a good deal of correspondence with the Bombay Government, an arrangement has been agreed upon, by which, under particular circumstances—in cases where it has been made clear that there is no proper machinery in the State itself for carrying the sentences into execution, and where, the State being very small, the circumstances are such that it would be unreasonable to expect it to provide that machinery—in those cases, and in those only, it is proposed to authorise the deportation of criminals to British India for the purpose of having the sentences passed on them carried into effect. This is the object for which I ask leave to introduce the Bill."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LANSDOWNE BRIDGE BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to remove doubts as to the levy and collection of tolls upon the Lansdowne Bridge over the Indus at Sukkur in the Presidency of Bombay, and for other purposes. He said:—

"The necessity for the Bill arises out of what I may call a draftsman's trap. By Act VIII of 1851 power was given to the Governors of the three Pre-

13TH OCTOBER, 1892.] [*Sir Alexander Miller.*]

sidencies, and the Lieutenant-Governor of the North-Western Provinces, respectively, to levy and provide for the administration of tolls on all roads and bridges made and maintained at Government expense. So long as that Act remained in force—and it does so remain everywhere except in the Presidency of Bombay—no difficulty could arise in respect to any of those roads and bridges: whether the 'Government' in question was the Imperial or the Local Government, the right of taxation and control was vested in the same persons. In the year 1875, however, an Act was passed by the Legislature of Bombay repealing this Act, and providing in somewhat similar terms an Act of their own, with very slight variations. Unfortunately the draftsman of that Act overlooked the fact that in the meantime one of those traps for unwary draftsmen called a 'General Clauses' Act had been passed in Bombay which confined the meaning of the word 'Government' when used in an Act passed by the Legislature of Bombay to the Government of Bombay; and consequently, when the Bombay Act of 1875 gave power to impose tolls upon roads and bridges made and maintained by Government, it meant in that Act—what it did not mean in the old one—the Government of Bombay only; and, as the Lansdowne Bridge was not made at the expense of the Bombay Government but at that of the Government of India, the result is that, by the merest accident, the provisions of the Bombay Act do not extend to this bridge.

"What I propose now is that, notwithstanding the repeal of the Act of 1851 by the Bombay Act of 1875, that Act shall apply to every bridge no matter where situate which has been made and built by the Government of India, and in regard to which no other adequate provision for the levy and collection of tolls has been made, and that in such cases the Governor General in Council shall be the authority to impose and regulate the tolls. I do not believe there is any other similar case in India, but, in case there should be, a clause has been inserted in the Bill to the effect that if there should be any road or bridge in India, made and maintained by Government, as to which no adequate provision has been made for the levy and collection of tolls thereon, the provisions of the Bill shall apply to such road or bridge.

"I further propose, in order to prevent any chance of dispute in the matter, expressly to legalise the tolls which have been levied up to the present on the Lansdowne Bridge, notwithstanding any legal doubts which may arise as to whether there was any authority to levy such tolls or not."

The Motion was put and agreed to.

[*Sir Alexander Miller.*] [13TH OCTOBER, 1892.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Bombay Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 20th October, 1892

S. HARVEY JAMES,

SIMLA ;
The 14th October, 1892.

Secretary to the Government of India,
Legislative Department.

G. C. Press, Simla.—No 306 L D.—14-10-92.—316.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 20th October, 1892.

PRESENT

The Hon'ble Sir P. P. Hutchins, K.C.S.I., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.
The Hon'ble Sir D. M. Barbour, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.
The Hon'ble Sir C. H. T. Crosthwaite, K.C.S.I.
The Hon'ble G. R. Elsmie.

GOVERNMENT MANAGEMENT OF PRIVATE ESTATES BILL.

The Hon'ble SIR PHILIP HUTCHINS moved that the Report of the Select Committee on the Bill to provide for the levy of a rate on private estates under the management of Government to meet the cost of superior supervision and management be taken into consideration. He said :—

"I shall not trouble the Council with many general remarks on the policy of this Bill. It is enough to remind them of the fundamental principle upon which it rests, namely, that it is only for the benefit and protection of private proprietors that the State undertakes the management of their estates, and that consequently all expenditure incidental to such management, including a fair share of the pay of supervising officers, ought be provided for out of the income of the estates, and not out of funds levied from the general taxpayer. The Bill has been favourably received in all the provinces, and, I believe, by the Press also so far as it has been noticed at all. I may therefore pass on at once to a brief statement of its principal details, noticing in particular those in which the Select Committee has made any material alteration.

"Of the definitions contained in the second section the most important is that which indicates the income upon which the Government rate or commission

is to be calculated. We have made it clear that borrowed money is not to be taken as income. The sale-proceeds of immoveable property have all along been excluded; we have now exempted also the proceeds of such moveable property as would itself be properly classed as capital. I will illustrate what is meant by an example. Jewels could not be properly classed as income, but are capital. Accordingly, if the Court of Wards ever finds it expedient to sell any of its wards' jewels, the money realized will not be regarded as income and will not be liable to the rate. On the other hand, there are obviously many kinds of moveable property which could not be classed as capital. Such, for instance, are the crops raised on the proprietor's home-farm, the produce of his cattle, and in horse-breeding districts his young stock. Where these are sold the proceeds will be regarded as income. The Bengal Government wished to assess the rate on the 'current demand,' or rents payable by the tenants of the estate, but we preferred to adhere to the draft Bill in this respect, as the alternative proposal would have left out of account all such items as I have just indicated.

"Then comes section 3, which empowers the Government to levy a rate on all income, defined as I have stated; but this rate is subject to two limitations: it must not be more than sufficient to cover a reasonable estimate of the cost of establishments and contingent expenditure, and it must in no case exceed 5 per cent. The maximum first proposed was 4 per cent., but instances have been adduced from Bengal, the Punjab and Ajmere which seem to show that a somewhat larger percentage may occasionally be required. We have accordingly allowed a maximum of 5 per cent. This rate will cover, among other things, all ordinary legal advice, and it will of course be subject to the other condition that no more is to be taken than the estimated value of the services rendered.

"Power is reserved to the Local Government to reduce or remit the rate whenever this seems equitable, and the Committee has inserted a proviso to make it clear that whenever any considerable special establishments are entertained for an estate its claim to a reduction shall receive due attention.

"I have been asked how this will work, and in reply it may be convenient that I should explain how I anticipate that Local Governments will ordinarily proceed. General estimates of the cost of supervision and management have already been framed in all provinces, and the probable income of each estate

will be shown in its annual budget. As soon as the budgets are ready for next year—or at once upon the estimates of the current year—the Court of Wards or Financial Commissioner will probably submit a statement showing the amount to be raised, the aggregate income, and what estates have special managers or any other special establishments which would give them a claim to reduction. They will also propose a general rate and such reductions as appear to them appropriate; and thereupon the Local Government will determine the rate and what reductions or remissions shall be allowed. In subsequent years, if matters have generally remained the same, it will only be necessary to show changes which have taken place or are proposed As an instance of a case in which reductions should be allowed, I may refer to a province in which most of the smaller estates are under the direct management of tahsildars, although others have special managers. The former would naturally be made subject to the full rate, while the latter would be entitled to a reduction

"The next section to be noticed is section 5. This provides that nothing in the Act is to apply to establishments specially entertained, or to expenditure specially incurred, for any estate or group of estates. It has been objected that the Bill gives no power to charge such special expenditure to the estates; but the reason is obvious. Every estate is clearly liable for its own special expenditure under the general law. The only doubt has been whether the cost of general supervision and management could be levied from all estates by a general rate, and it is that doubt which will now be removed For the same reason it has not been thought necessary to provide that the rate shall take precedence over private debts. Creditors can only look to the net income, or, in other words, to the gross income less the cost of management and other expenditure incurred in the realization of the income.

"In conclusion I have only to mention that we have added a section, at the instance of my hon'ble friend the Lieutenant-Governor of Bengal, repealing enactments which provide in that province for very nearly the same matters as are dealt with by this Bill, but not so comprehensively."

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LOWER BURMA TOWNS BILL.

The Hon'ble SIR CHARLES CROSTHWAITE moved that the Report of the Select Committee on the Bill to further provide for the Administration of Towns in Lower Burma be taken into consideration.

He said that he had nothing now to add to what he had said when he introduced the Bill. The Select Committee had received no criticisms whatever from the public, and the Bill had been accepted as it stood by the Local Government.

The Motion was put and agreed to.

The Hon'ble SIR CHARLES CROSTHWAITE also moved that the Bill be passed.

The Motion was put and agreed to.

LANSDOWNE BRIDGE BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to remove doubts as to the levy and collection of tolls upon the Lansdowne Bridge over the Indus at Sukkur in the Presidency of Bombay, and for other purposes, be taken into consideration.

He said that the Bill, as he had explained at the last meeting of the Council, was merely intended to meet an accidental draftsman's error in the Bombay Act, III of 1875; it had not been considered that there was anything in the Bill which required its reference to a Select Committee; and he would, therefore, ask the Council now to take it directly into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said :—

"Before I make the next Motion I must ask the permission of the Council to move an amendment in this Bill of which I have not given notice. The fact is that I was so much taken up with other matters that I was not able until this morning to settle the exact terms in which the amendment is to run.

The last clause of the Bill is very badly drawn, and as I drew it myself I have the less hesitation in saying so. As drawn it would appear only to apply to public roads or bridges already made, whereas it is quite clear that a similar slip might occur in the case of a road or bridge which may hereafter be made It is therefore desirable to alter the clause so as to make it clear that in such cases also this Act shall apply.

"As hon'ble members have the Bill before them I will not trouble them by reading the clause as it stands, but I will read it as I propose that it shall stand. I propose that it shall run in this way :—

Application of Act to public roads and bridges

'When any public road or bridge has or shall have been made and repaired at the expense of the Government of India and no other adequate provision shall have been made for the levy and collection of tolls thereon, the Governor General in Council may, by notification in the Gazette of India, apply this Act to such road or bridge, and thereupon all the provisions of this Act shall apply to such road or bridge as if the same had been herein named in addition to the said Lansdowne Bridge.'

"The last alteration, namely, the substitution of the words 'in addition to' for the words 'instead of', I am making at the suggestion of Sir Philip Hutchins, who pointed out that the words as they stood might have the effect of cutting out the Lansdowne Bridge from the operation of the Act, if it were applied to any other road or bridge.

"I move therefore that section 4 of the Bill be amended so as to run in the manner in which I have read it."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to

MERCHANT SHIPPING BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea. He said :—

"The Bill which I ask leave to lay before the Council is at present in the form of two Bills, but on account of certain difficulties connected with the Rules of Business, which it is not necessary for me to go into at any length here, I feel myself obliged to propose to introduce one Bill only, although I give notice now that when we go before the Select Committee I will ask that Committee to restore the arrangement and separate the Bill into two Bills. The Bill, or at least a substantial part of it, has been settled in communication with the Finance Department.

"This Bill, then, comprising 415 sections, consolidates 14 entire Acts and portions of 10 other Acts, or, in other words, some 506 entire sections, besides portions of other sections. It carries the process of consolidation as far, I think, as is practicable. There may be some few scattered enactments on the Indian Statute-book which might be included in the Bill, and which further examination at leisure, or the reports of Local Governments, may bring to light; but at present I believe the Bill comprises all enactments which can conveniently be included in it.

"The reasons for the exclusion from this Bill of certain subjects (which I will enumerate in a moment) which seem at first sight intimately connected with it are given at length in a very able and exhaustive note by Mr. F. G. Wigley, of the Legislative Department, which will, I trust, be circulated along with the Bill, and to which I would take the liberty of referring any hon'ble member who may be desirous of looking more closely into the question.

"It is obvious that in a system of law like ours there must be many subjects which are so intermingled that no one of them can be dealt with exhaustively by itself, and all that you can do is to make your classification as complete as may be, so as, on the one hand, to bring together in convenient groups those matters which are closely allied, and on the other to avoid the temptation of casting your net too wide, so as to make your Acts unwieldy in themselves besides swelling the Statute-book to an unnecessary and burdensome extent.

"The various enactments relating to local ports, quarantine, sea customs, emigration and Courts of Admiralty, all of them more or less connected with the subject of merchant shipping, have therefore been excluded from the present Bill; if necessary, each of these matters may conveniently form the subject of separate consolidation.

"The Bill embodies, besides the Indian Acts already referred to, as many of the provisions of the English Merchant Shipping Acts, 1854 to 1892, as are within the legislative powers entrusted to this Council and as it seemed desirable to include in a Bill, like the present, for consolidating and bringing up to date the Indian Statute law. On the other hand, it leaves outstanding many provisions of those Acts which incidentally apply to India but which it is beyond the power of this Legislature to repeal or re-enact.

"Accompanying the Bill will be found four statements, marked A, B, C and D, respectively, showing the corresponding clauses of the existing Acts (Indian and English) and of the Bill in parallel columns. These statements have been prepared with great care by Mr. Wigley, and, though I have not had time to go completely through them and verify the references one by one, I have found them, wherever I have had to make use of them, thoroughly accurate, and I have no doubt that hon'ble members may implicitly rely upon them as correct.

"The Bill is divided into forty-five chapters, which have been grouped in ten parts.

"Part I contains the usual preliminary clauses, of which I need only call attention to section 4, which, in anticipation perhaps of future invention, provides that the clauses affecting steam-ships shall be applicable *mutatis mutandis* to vessels driven by electricity or other mechanical power.

"Part II, which deals with measurement and registry of British ships, has been intentionally limited in its operation. It seems doubtful whether the authority of this Council in this matter has not been accidentally limited by English legislation, and it has also been deemed expedient to pay a certain amount of deference to a somewhat questionable opinion of the Board of Trade, expressed in a letter dated 4th May, 1869, to which I will call attention bye and bye.

"The subject of registration has presented much difficulty, delicate issues both of law and policy constantly arising, and it is therefore desirable that I should state the position somewhat in detail.

"The Statute 3 & 4 Vict., c. 56, sections 3 and 4, conferred the following powers on the Governor General of India in Council:—

(*a*) power to declare that ships built within the limits of the Charter of the East India Company, being owned by Her Majesty's subjects for

whom the Governor General in Council has power to legislate, and belonging to British Indian ports, shall be deemed to be British ships for all purposes of trade within the said limits, including the Cape of Good Hope and the territories and dependencies thereof;

(*b*) power, upon such declaration being made, to make regulations—

(*i*) concerning the registering, licensing, and ascertaining the admeasurement of the tonnage and burden, of such ships, and

(*ii*) generally, for the trading of such ships within the limits aforesaid; and

(*c*) power to make regulations for admitting to all or any of the privileges and advantages of British ships for the purposes of trade within the limits aforesaid any ships—

(*iii*) belonging to Native Princes or States in subordinate alliance with, or having subsidiary treaties with, the East India Company, or

(*iv*) owned by subjects of any such Prince or State;

such regulations to provide for the granting to such ships of licenses or passes, and generally for the trading of such ships within the limits aforesaid.

"These powers were exercised by the Proclamation appended to Act X of 1841, by that Act itself, and by Act XI of 1850; and it was provided by the first-mentioned Act that ships of Native States, to obtain passes, should be commanded by a British subject for whom the Governor General in Council has power to legislate.

"These regulations were in a certain sense superseded by the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), Part II of which provides for the registration of ships not only in the United Kingdom but throughout Her Majesty's dominions. The Statute 3 & 4 Vict, c. 56, was, however, saved by section 108 of the Statute of 1854, and consequently the registration of ships under the Indian Acts of 1841 and 1850 continued to be lawful. But, for some reason, which may be guessed at, though never authoritatively explained, the sections of the Statute 3 & 4 Vict., c. 56, which I have read were repealed by the

Statute Law Revision Act, 1874, No. 2 (37 & 38 Vict, c. 96), with a saving, however, which continues the Indian Acts in force as they stood at that date.

"Registration under Acts X of 1841 and XI of 1850 is optional, and confers the privileges of a British ship within certain limits only, *viz.*, those of the old East India Company's Charter, whereas registration under the Merchant Shipping Act, 1854, is good all over the world: consequently, certain classes of ships (namely, those of European build,) have long been registered in British India under that Act, so that registration in this country is carried on, in different cases, under both English and Indian Acts. Besides those Acts there is a local Act (XIX of 1838) which makes compulsory the registration under it of 'vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay, and employed on the coasts of the territorries subject to the Government of Bombay or in trading coastwise,' and 'fishing vessels and harbour craft belonging to any of Her Majesty's subjects.'

"We thus have three sets of provisions for the registration of ships in British India (excluding Bombay Act I of 1863, which refers only to the river Indus)—

(1) the English Merchant Shipping Acts,

(2) Act XIX of 1838 (Bombay Coasting Ships), and

(3) Act X of 1841, as amended by Act XI of 1850 and subsequent enactments.

"The Council will perceive that by the repeal of 3 & 4 Vict., c. 56, ss. 3, 4, the power of the Governor General in Council to re-enact the provisions of Acts X of 1841 and XI of 1850 in the present Bill has apparently been taken away, although those Acts, so long as they remain unrepealed, are by virtue of the saving clause already mentioned preserved in full force and validity. It has therefore been considered advisable to omit from the consolidation now proposed those provisions of the Acts in question which it is thought necessary to keep alive. This of course mars the symmetry of the present Bill, but that has been thought preferable to running any risk of our legislation being set aside as *ultra vires.*

"Further, it has been deemed advisable to restrict our legislation on the subject of measurement of tonnage to the case of native craft plying exclusively in our own waters, and, on the subject of registration generally, to enact pro-

visions merely in adaptation of or ancillary to the English provisions on the same point, in deference to the views of the Board of Trade expressed in the letter already mentioned. This letter, which is dated the 4th May, 1869, and was written by the Board of Trade in reference to the Bill of 1867 for the consolidation of the Indian Merchant Shipping Law, contains the following passages:—

'The Bill contains certain provisions which are already on the Imperial Statute-book, and which should remain on the Imperial Statute-book and on that Statute-book only.

'The most important of these are the provisions which relate to the description, ownership and measurement and registry of British ships.

'It is obviously the function of the Imperial Legislature, and of the Imperial Legislature only, to declare what shall entitle ships to claim British nationality; in other words, who are the persons entitled to own British ships and under what regulations they shall be placed on the register. It is also important, as a matter of imperial and even of international convenience, that the rules concerning the measurement of tonnage should be identical throughout the Empire; and it is no less important that the rules which govern title as conveyed by the register should be uniform. It is obvious that these objects cannot be effectually secured if each British Possession legislates independently on these subjects.'

"It is true that the position thus taken up by the Board of Trade is unconstitutional and untenable, and would not be admitted for a moment in any of our self-governing colonies. He would be a bold man who would read such a letter without disclaimer in the Parliament at Ottawa or Sydney. No representative body can have any authority to legislate directly for any territory not represented in it, whatever indirect power it may have by reason of its control over the persons, whether the Ministers of the Crown or a subordinate Legislature, in whom the territorial authority is directly vested.

"The doctrine of the Board of Trade's letter, if carried to its logical conclusion, involves the principle of Lord North's Stamp Act, which cost England the American Colonies, and of the declaratory Act of George I which would have cost her the possession of Ireland if it had not been promptly disclaimed just 110 years ago.

"Moreover, although the 'Imperial Parliament' is a convenient phrase to denote the United Parliament sitting at Westminster, and was originally, I believe, used to distinguish that body from the Parliaments of Great Britain

and of Ireland respectively, no body to which that name is really applicable is yet in existence, and, although it is by no means impossible that such a body may be established hereafter, I doubt very much whether the youngest man present will live to see that day. That the Parliament of the United Kingdom of Great Britain and Ireland (this is the correct title of the august body referred to) is not an Imperial Legislature is abundantly clear, if only from the fact that, within the last three years, two bodies, neither of which can compare with this Council either in dignity or importance—the States of Jersey and the House of Keys of the Isle of Man—have successfully resisted attempts to alter their institutions by direct Parliamentary action.

"But I need not discuss this question at length, because under the circumstances it is of purely academical interest: (1) because the authority of Parliament over this Council, which is its own creature, is unquestionable, and (2) because, even if that were not so, it is obviously desirable that the systems of measurement and registry should be the same throughout the Empire, and that for that purpose the provisions of the English Statutes should be relied on for British Indian ships with such additional provisions as may be requisite to meet the case of ships belonging to the subjects of Native Princes or other special cases. This view was accepted by the Government of India in their despatch No. 13, dated 15th July, 1869, and under these circumstances it is proposed by the present Bill to repeal Act XIX of 1838 and so much of Acts X of 1841 and XI of 1850 as deals with the registration of ships, and to leave all registration in British India for the future to be conducted under the English Merchant Shipping Act, 1854, as amended by subsequent Acts, subject to the qualifications necessary to meet the peculiar circumstances of Indian shipping.

"While, however, repealing those portions of Acts X of 1841 and XI of 1850 which relate to registration, the portions relating to the grant of passes to ships belonging to Native Princes or States or their subjects have been left untouched. It is desirable to maintain these provisions, but it is not possible, for the reasons already mentioned, to re-enact them at the present day

"The Government of India appears to have no information as to why section 4 of the Statute 3 & 4 Vict., c. 56, was repealed in 1874, but, as the repeal was effected by a Statute Law Revision Act, the probability is that, as the Act had been superseded in England by the later Merchant Shipping Acts, it was supposed to be spent, and the Statute Law Revision Committee did not notice

that it still was operative to authorize this Council to do what it could not do without such authority, *viz.*, to confer the privileges of British ships on ships which do not fulfil the conditions specified in section 18 of the Merchant Shipping Act, 1854. It has been suggested that the Secretary of State should be addressed on the subject and asked to bring in a Bill for reviving the section, with such amendments as present circumstances require. It is not understood why the useful power conferred by the section should have been withdrawn, and it is, moreover, inconvenient that there should be on the Indian Statute-book enactments which the Indian Legislature is powerless to amend or re-enact. With that, however, we are hardly now concerned. The Merchant Shipping Act, 1854, section 547, confers on the legislative authority of any British possession power to repeal wholly or in part any provisions of that Act relating to ships registered in that possession, subject to the approval of Her Majesty by Order in Council; and this power has been relied upon, so far as may be necessary, for legalising the provisions of Chapter II of the present Bill.

"It might be urged against this plan that the provisions of the English Statute law on the subjects of measurement, marking and registration, and the orders of the Board of Trade under them, are so scattered that it will be difficult for registrars in Indian ports to ascertain what their duties will be. This inconvenience exists at present in cases where ships are already registered in British India under the English law, although it is to some extent minimised by the periodical publication of the rules and orders of the Board of Trade in pamphlet form; and care will be taken further to reduce it as far as possible when a new edition of Pearson's Digest is taken in hand. I admit that it would be preferable, if it were possible, to embody in the Bill a simple law for the registration of coasting craft; but the Government of India, as I have already explained, is not free to pass such a law, and must wait for the necessary powers if and when Parliament may choose to confer them.

"Part III of the Bill, which contains eighteen chapters, or nearly one-half of the whole, deals with masters, seamen and apprentices.

"It is practically a reproduction of the existing law except where that differs from the law of England, to which it is proposed to assimilate it in several respects, the most important of which will be found at section 31 in Chapter V, which follows closely the provisions of the Merchant Shipping Act, 1854, sections 136, 137, as to the certificates to be required for the officers of foreign-going

ships, and section 33, in the same chapter, which requires foreign steam-ships carrying passengers locally in British India, *i. e.*, from one British Indian port to another British Indian port, to have on board certain officers with British certificates unless specially exempted therefrom by the Local Government with the sanction of the Governor General in Council.

"There are also some useful provisions inserted with a view to securing that seamen shall not be bound by agreements which have not been properly explained to and understood by them.

"I ought perhaps to call particular attention to section 93 in Chapter XI, which gives the Court before which any proceeding is pending relating to a dispute between master and seaman or master and apprentice an equitable power of going behind the bond. The section is copied verbatim from the Merchant Shipping Act, 1880, section 8, and, though the Courts concerned, which include even any Magistrate, seem hardly of weight enough to be trusted with so important a discretion, it may, I presume, be accepted. I believe it has not been found productive of any practical inconvenience in the twelve years during which it has been law in England.

"Sections 97 and 100, which relate to the recovery of the wages of seamen or apprentices who are lost with their ship, are taken from the provisions of the Merchant Shipping Act, 1862, section 21, with certain alterations in procedure to adapt the section to local circumstances.

"Section 106 introduces into India provisions similar to those enacted for the United Kingdom by sections 3, 4 and 6 (2) of the Merchant Shipping Act, 1892, passed last June. The necessity for inspecting seamen's provisions has been felt in India as well as in England. The recent case of the *Crofton Hall* at Calcutta is one in point. It is hoped that this section, in conjunction with section 109, which is a reproduction of Act I of 1859, section 71, will be found to make sufficient provision for the inspection of provisions and water for the crews, both lascar and European, of ships, both home-trade and foreign-going.

"Section 114 requires special notice. It purports to limit the size of lascars' chests to a maximum of six cubic feet—rather less than two full-sized office boxes. It is inserted merely for discussion, in accordance with the wish of the Finance Department. The policy of the section has been questioned by His

Excellency the Viceroy, and it is intended to refer the matter to Local Governments for further consideration.

"Section 135 adapts to India the provisions of section 7 of the Merchant Shipping Act, 1871, and section 9 of the Merchant Shipping Act, 1873, for the protection of seamen charged with desertion in cases where the defence consists of an allegation of unseaworthiness or unsafety of the ship, or insufficiency of accommodation for the crew.

"I do not think there is anything else in this Part of the Bill to which I need direct your attention. There are numerous small amendments of the law, almost invariably taken from the provisions of the English Acts, and none of them of sufficient importance to require specific mention at present.

"Part IV deals with safety and prevention of accidents. Chapter XXI, with which it begins, is entirely new. It enacts for India the provisions of the Merchant Shipping (Life-saving Appliances) Act, 1888 (51 & 52 Vict., c. 24). That Statute already incidentally extends to India, since it applies to all British ships and is not locally restricted; but the practical working of the Statute depends entirely on the making of rules under section 3, and the rules made by the Board of Trade do not apply to India. The Board, as constituted in 1889, seem to have taken a more constitutional view of their functions than their predecessors of twenty years previously, and they accordingly announced on the 21st December in that year that they 'did not propose to take any steps with regard to the life-saving appliances on board ships leaving ports out of the United Kingdom,' and that 'it would be competent for the Government of India to take such steps as they might think fit with regard to the enforcement of the rules in India.' The proper course appears to be to re-enact the provisions of the Statute for India and to give the Local Governments (with the previous sanction of the Governor General in Council) power to make rules for working it, and this is the course now proposed to be taken.

"The rest of this part is practically the re-enactment of existing law, including the Load-lines Act of last year, and does not seem to call for any specific mention.

"Part V deals with wrecks, casualties and investigations. There are only two points in it which seem to call for remark.

"Under the existing law (Act V of 1883, section 10,) the Local Government may direct an independent investigation into a charge of incompetency or misconduct to be made by—

(a) a Court of Admiralty, or

(b) (where there is no Court of Admiralty) a principal Court of ordinary criminal jurisdiction.

"It is proposed by section 263 to empower the Local Government to select for the purpose of holding such an investigation a Presidency Magistrate or (for the Mufassal) a Magistrate of the first class. I am doubtful of the advisability of this provision; I do not think that the substitution in England of a Metropolitan Police Magistrate for the Wreck Commissioner has been a happy one, but there can be no harm in calling attention to the question.

"The other point is not, I think, open to controversy. It arises on section 270. When an investigation has been held into a shipping casualty, or into the conduct of a master, mate or engineer, it is desirable that the Local Government should, if sufficient cause arises, have power to order a re-hearing. The only power under the existing law to order a re-hearing is that conferred on the Board of Trade by section 2 of 42 & 43 Vict., c. 72, and section 6 of 45 & 46 Vict., c. 76. The provisions of the sections named, as to re-hearing, have been incorporated, with the necessary alterations, in section 270 of the Bill, the Local Government being substituted for the Board of Trade. The section will not of course interfere with any power the Board may have to order a re-hearing on its own account, as to the extent of which power it is not necessary for me to offer any opinion.

"Part VI deals with assistance to passengers abroad. It does not call for any remark at present, but I think it should be referred to the Home and Revenue Departments for any suggestions which they may wish to make for its amendment. Amongst other things, the enumeration of voyages in section 272 may need revision.

"Part VII incorporates and consolidates the law affecting native passenger-ships A Commission was appointed in 1890 to enquire into the administration of the Native Passenger-ships Act (X of 1887). This Part reproduces that Act revised in accordance with such of the recommendations of the Commission as have been accepted in the Finance Department.

"The principal amendments are that the definition of a long voyage has been altered so as, amongst other things, to include all voyages to Aden and beyond, and that quite new definitions have been inserted of shelter-port voyages and excursion voyages, and that general provisions for all voyages and the special provisions for long voyages on the one hand, and short, shelter-port and excursion voyages on the other, have been put into separate chapters. Some extra penalties have also been provided for breaches of duty on the part of the master, and the power of making rules has been extended so as to provide for proper deductions from the calculated space measured for passengers in cases where live-stock are carried in such space.

"Part VIII embodies the law as to coast-light dues. The only point in it requiring notice is that by section 330 power has been given to abolish coast-light dues either entirely or in respect of any class of ships. It is expedient that the Government should possess this power, to be exercised when it is found that certain ships are made to pay dues which derive no benefit from the lights, or when the receipts are much in excess of the expenditure.

"Part IX contains a number of miscellaneous clauses of an ancillary nature such as are now usually inserted in Acts of this Council, and most of which merely reproduce the existing law.

"Section 344 provides that offences against the Act or any rule made thereunder shall be triable by a Presidency Magistrate or a Magistrate of the first class, following in that respect the provision in Act VII of 1884, which seems the most reasonable of the provisions to be found in the Acts consolidated. It is not of much consequence perhaps what the rule may be, but it certainly should be uniform: at present what it is depends not upon the character of the offence, but upon the Act under which the offence is tried.

"There are one or two other amendments of matters of procedure, of which the most important is contained in section 346, which combines the provisions of Act I of 1859, Act V of 1883 and Act X of 1887 as to the use as evidence of depositions of absent witnesses. These provisions have been applied to all legal proceedings under the Bill with certain alterations, namely:—

(1) Depositions are made admissible if the defendant or the person accused, as the case may be, fails to produce the witness, instead of, as at present, on proof that the witness cannot be found within

the jurisdiction. As the deposition must have been taken in his presence, and full power and opportunity of cross-examination must have been reserved for him, there can be no injustice in throwing upon him the onus of producing the witness, if within the jurisdiction, and if he thinks it worth his while to do so.

(2) The clause as to cross-examination of the witness whose deposition it is proposed to receive in evidence is applied to civil as well as criminal cases. Without cross-examination no evidence is reliable, and there can be no reason why a witness in a civil suit should be exempted from the ordeal.

(3) It is provided that, where such a cross-examination has taken place, the deposition shall not be received in evidence unless the cross-examination is recorded as part of the deposition. This is to prevent a cross-examination from being burked, if the examination-in-chief could be used without producing the cross-examination, the prosecution might in some cases be tempted to throw the onus of producing the cross-examination on the accused.

"These alterations have been specifically approved after examination in the Home and Legislative Departments.

"The tenth Part of the Bill is that which is printed separately under the name of the Inland Steam-ships Bill. It may be dismissed in comparatively few words. It is practically a reprint of the Inland Steam-vessels Act (VI of 1884) as amended by Acts III of 1890 and XII and XIII of 1891, and it is obviously necessary in dealing with merchant shipping generally that these Acts should be consolidated.

"Mr. Ilbert in his speech in Council on this subject on the 2nd March, 1883, expressed an opinion that it was desirable to keep the provisions as to inland steam-ships in a separate Act, rather than to embody them in an Act dealing with merchant shipping, because the law on the latter subject is liable to be affected by legislation in England, while the regulation of inland steam-ships is a matter solely within the scope of Indian legislation. In deference to that opinion the enactments with reference to inland steam-ships have been prepared in the shape of a separate Bill, but there have been found inconveniences connected with the Rules of Business which render it impossible for me at this moment to

introduce them as a separate Bill. I therefore propose to introduce them as a part of the Merchant Shipping Bill and as Part X of that Bill; but in deference to Mr. Ilbert's view I shall ask the Select Committee to whom the Bill will formally be referred to separate and reconstitute the Bill into two Bills.

"The amendments now proposed, as distinguished from mere consolidation and re-arrangement, are very few, and for the most part merely formal.

"Only three of these amendments seem to require any notice on this occasion. Two of them are identical with amendments already mentioned as forming part of Part V of the Merchant Shipping Bill, and relate to the Courts to be empowered to hold investigations arising out of wrecks and other casualties, and the remaining amendment proposes to make what may be called a graded list of the certificates mentioned in it. It has been inserted as a means of avoiding complicated clauses in the next following section of the Bill (which is equivalent to section 28 of Act VI of 1884).

"I have now reached the schedules. These comprise—

(1) the list of enactments proposed to be repealed;

(2) provisions as to certificates granted under Acts passed prior to 1884

(3) various lists of fees;

(4) the agreement with France concerning wrecks, dated 23rd October, 1889;

(5) form of certificates of expenditure on account of shipwrecked passengers; and

(lastly) a list of the voyages in respect of which coast-light dues are payable.

"The language of the Bill will, I think, require alteration in some respects, but that will be a question for the Committee stage, which is still a long way off, and it need not detain us at present. It is inevitable in a work of consolidation of this kind that the language of the Acts to be consolidated should not always be consonant, and that variations of expression and the like should survive even the most careful examination of the draft.

"In conclusion I desire to express the very strong sense I feel of the skill, labour and attention which have been bestowed upon these Bills by Mr. O'Conor, Mr. Bestic and Mr. Wigley, the general excellence of the drafting, the painstaking manner in which the several Acts have been compared, and the careful

accuracy of the references, which will be found extremely useful by any hon'ble member who may wish to look into the matter for himself: I do not invite any one to take it on trust from me.

"In particular I have on my own personal account to thank Mr. Wigley for his very accurate and detailed note upon these Bills, of which I have availed myself largely in preparing this resumé, which I have found of the very greatest service, and without the aid of which I could not possibly, in the limited time at my disposal, have attempted to fathom the scheme of the Bills myself, much less to have made it—as I hope I have to some extent succeeded in doing—intelligible to the rest of the Council."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Maritime Governments think fit.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER obtained the leave of the Council to withdraw the subsequent Motions standing in his name, namely :—

(1) The Motion to move for leave to introduce a Bill to consolidate and amend the law relating to Inland Steam-ships.

(2) The introduction of the Bill.

(3) The Motion that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Maritime Governments think fit.

The Council adjourned *sine die.*

S. HARVEY JAMES,

Secretary to the Government of India,
Legislative Department.

SIMLA;
The 26th October, 1892.

G. C. Press, Simla.—No. 330 L. D.—1-11-92.—716.